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APPENDIX

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 699

JOHN EARL CAMERON, ET AL., APPELLANTS,

VS.

PAUL JOHNSON, ETC., ET AL.

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI**

FILED MAY 15, 1967

PROBABLE JURISDICTION NOTED OCTOBER 9, 1967

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[1]

RELEVANT DOCKET ENTRIES

Date

Filings—Proceedings

4-13-64 Complaint in action for injunction, with seven copies, filed. Page 1

4-13-64 Motion for convening of three-judge District Court with seven copies, filed. Page 10

• • • • •

4-22-64 Supplemental Complaint: that James K. Dukes be substituted for Joe R. King as County Attorney, Forrest County, Miss., filed. Page 11

4-23-64 Designation of a three-judge court naming: Judge Richard T. Rives, Montgomery, Alabama; Judge W. Harold Cox, Jackson, Mississippi; Judge S. C. Mize, Gulfport, Mississippi, filed. M.B. 1964, Page 13

• • • • •

4-23-64 Order signed by Judge Mize for Interlocutory Injunction hearing at Meridian, Miss. on 4-29-64, filed. O.B. 1964, Page 72

• • • • •

[2]

5- 7-64 Motion for leave to amend complaint pursuant to Rule 15, Federal Rules of Civil Procedure, filed, original only

5- 7-64 Amended Complaint: amended to read BUD GRAY, individually and as Sheriff of Forrest County, Miss., filed, original only. Page 20

• • • • •

5-13-64 Separate answer of Paul B. Johnson, Jr., individually and as Governor of the State of Mississippi with copy of motion to quash filed in County Court, Forrest County, Miss., with certificate of mailing, filed. Page 28

Date

Filings—Proceedings

5-13-64 Separate answer of James Finch, individually and as District Attorney of Forrest County, Miss., with certificate of mailing, filed. Page 35

.

[3]

5-27-64 Second Supplemental Petition and Petition for Stay of State Court Proceedings with copies of charges, copy of Motion to Quash, copy of affidavit of Bruce C. Waltzer from County Court, Forrest County, Miss., together with certificate stating that Second Supplemental Petition had been mailed to James K. Dukes, Will Wells, James Finch, W. G. "Bud" Gray with unsigned Order to the Court for an injunction, filed.

.

6- 1-64 Order that Plaintiffs are granted leave to file the amended Complaint proffered to the Court; that the Defendants are granted 10 days from the date hereof to plead to said amended Complaint, filed, O.B. 1964, Page 95

.

6- 3-64 Amended complaint with three copies together with certificate of mailing and Exhibit "A", filed. Page 62

.

[4]

6-18-64 Answer of Defendants: Paul B. Johnson, James K. Dukes, James Finch, Bud Gray, with three copies, filed. Page 71

.

7-14-64 Majority opinion in 12 pages dated 7-11-64 by Judge S. C. Mize, Judge Harold Cox concurring, Judge Richard T. Rives dissenting: "A finding of facts and conclusions of law is prepared sepa-

Date

Filings—Proceedings

rately and filed along with this opinion and made a part of it as if copied herein. We are of the opinion that under the law and the facts of this case it is the duty of the Federal Court to abstain and permit the plaintiffs to pursue their state

[5]

remedies, as they have already commenced to do. The complaint and the amended complaint, therefore, will be dismissed and the relief sought will be denied, and the plaintiffs will be assessed with all costs, filed. Page 78

7-14-64 Finding of facts and conclusions of law in 6 pages dated 7-10-64, by Judge S. C. Mize, Judge Harold Cox concurring, Judge Richard T. Rives dissenting: * * * "Under the facts and under the rules of applicable law in this case, the plaintiffs are not entitled to any injunctive relief herein. * * *", filed. Page 90

7-14-64 Dissenting opinion in 5 pages, by Judge Richard T. Rives: * * * "In my opinion, the statute under attack is clearly unconstitutional, and the plaintiffs are just as clearly entitled to have enforcement enjoined. I therefore respectfully dissent * * *", filed. Page 96

7-14-64 Judgment in one page dated 7-11-64, by Judge Sidney C. Mize, Judge Harold Cox concurring, Judge Richard T. Rives dissenting: * * * "It is, therefore, so ordered and adjudged by the Court that the amended complaint of John Earl Cameron and Victoria Gray, et al, is without merit and is dismissed on the grounds and for the reasons stated in said opinion, finding of facts and conclusions of law; and the plaintiffs (named and unnamed) are assessed with all costs of this suit to be taxed according to the rules of this Court. * * *", filed. C.O.B. 1964, Page 121

7-22-64 Notice of Appeal: that appellants appeal to the United States Court of Appeals for the Fifth Circuit from the judgment of this Court rendered on or about July 11, 1964 and filed on

Date

Filings—Proceedings

or about July 14, 1964, with five copies, filed.
Page 101

8-10-64 Notice of Appeal to the Supreme Court of the
United States with Certificate of Service, filed.

[6]

7- 6-65 Certified copy of Judgment from U. S. Supreme
Court, No. 587 Misc. October Term, 1964: "It
is ordered and adjudged by this Court that the
judgment of the said United States District
Court in this cause be, and the same is hereby,
vacated with costs; and that this cause be, and
the same is hereby, remanded to the United
States District Court for the Southern District
of Mississippi for reconsideration in light of
Dombrowski v. Pfister, 380 US 479. June 7,
1965;" Clerk's costs \$100.00, The above amount
to be paid directly to the Clerk of the Supreme
Court of the United States, filed. M.B. 1965,
Page 137—O.B. 1965, Page 175. Page 104

7- 6-65 Certified copy of motion for leave to proceed in
forma pauperis, order that motion be and the
same is hereby, granted, filed. M.B. 1965, Page
138—O.B. 1965, Page 176

8-20-65 Ordered that the said three-judge District Court
be reconstituted to consist of Honorable Richard
T. Rives, United States Circuit Judge, Honor-
able J. P. Coleman, United States Circuit Judge
and Honorable William Harold Cox, United
States District Judge, filed. O.B. 1965, Page 212
—M.B. 1965, Page 145

Date

Filings—Proceedings

- 8-27-65 Plaintiffs moves the Court pursuant to the judgment of the Supreme Court of the United States entered 6-7-65, for a hearing in accordance with said judgment; for permanent relief prayed for in complaint and amended complaint, filed

[7]

- 11-16-65 Court Reporter's transcript of proceedings taken at Biloxi, Miss., on 10-15-65, filed. See separate volume
- 2- 3-66 Stipulation that a drawing of certain areas adjacent to county courthouse may be considered as introduced in evidence, filed
- 2- 3-66 Stipulation that a drawing of certain areas adjacent to county courthouse does not show an entrance to the county court room, with copy of drawing attached, filed

- 9-23-66 Restraining Order: Order that District Attorney and County Attorney be ordered and directed to desist from prosecution of approximately 40 criminal cases in state court and to further pass disposition of cases until further orders of this Court; the U. S. Marshal shall serve an attested copy on each attorney, filed. O.B. 1966, Pages 267-268

[8]

- 9-30-66 Motion for a preliminary injunction or order staying state proceedings in County Court, Forrest County, Mississippi, filed
- 12-24-66 Opinion of Circuit Judge Rives, filed. Page 107
- 12-24-66 Opinion of Circuit Judge Coleman, filed. Page 138

Date

Filings—Proceedings

- 12-24-66 Opinion of Chief Judge Cox, filed. Page 152
- 12-24-66 Findings of Fact and Conclusions of Law; order to enter, filed. Page 156
- 12-24-66 Judgment: complaint dismissed with prejudice, plaintiffs assessed with costs, extant restraining orders are abated and dissolved within 30 days after 12-23-66 to enable such parties to apply for further relief, filed. O.B. 1966, Pages 363-364. Page 161
- * * * * *
- 1-20-67 Notice of Appeal to the Supreme Court of the United States: Plaintiffs appeal from the judgment of this Court rendered December 23, 1966, entered December 24, 1966, with five copies, filed. Page 163
- 1-26-67 Motion for Continued Stay by plaintiffs with Order that the extant restraining orders of this court, which have operated as a stay of criminal proceedings now pending in the State Courts of Miss., against plaintiffs in this case, be and the same are hereby extended and kept in effect until final disposition of this cause by the U. S. Supreme Court, signed by Circuit Judge Jas. P. Coleman, with certificate of service, filed. O.B. 1967, Page 22-23. Page 166
- 1-27-67 Copies of Notice of Appeal and above Motion for continued stay mailed three judges.

A True Copy, I Hereby Certify.

Robert C. Thomas, Clerk. By: S. Carter, Deputy Clerk.

Dated: 1-30-67.

[9]

AMENDED COMPLAINT

To the Honorable, the Judges of the United States District Court, for the Southern District of Mississippi, Hattiesburg Division:

Parties

1. Reverend JOHN EARL CAMERON and MRS. VICTORIA JACKSON GRAY are residents of the State of Mississippi and citizens of the United States. They are members of the Negro race and bring this action for themselves and as representatives of all other Negro citizens of the City of Hattiesburg, Mississippi, and the State of Mississippi similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. They bring this action also as representatives of those citizens of the United States, Negro and white, similarly situated who are attempting by constitutional means to enforce the constitutional right of Negro citizens of the State of Mississippi to register and vote in that state.

[10] 2. Defendant PAUL JOHNSON is sued individually and as the Governor of the State of Mississippi. He is a resident of the state of Mississippi.

3. Defendant JAMES K. DUKES is sued individually and as County Attorney of Forrest County, Mississippi. He is a resident of the State of Mississippi.

4. Defendant JAMES FINCH is sued individually and as District Attorney of Forrest County, Mississippi. He is a resident of the State of Mississippi.

5. Defendant BUD GRAY is sued individually and as Sheriff of Forrest County, Mississippi. He is a resident of the State of Mississippi.

Jurisdiction

6. The jurisdiction of the Court over the complaint arises under Title 28 USCA 1331 (a), 1334 3, 4, 2201, 2202, 2281: Title 42 USCA, 1971, 1981, 1983, 1985, and under the Constitution of the United States and particularly the First, Fifth, Thirteenth, Fourteenth and Fifteenth amendments thereto.

7. The amount in controversy, exclusive of interest and costs exceeds the sum of \$10,000.00.

Cause of Action

8. The plaintiffs and the classes of citizens, Negro and white they represent are attempting through peaceful, non-violent and constitutional means to achieve the elimination of all forms of racial segregation in the State of Mississippi. This is an objective guaranteed by the Thirteenth and Fourteenth Amendments to the Constitution of the United States.

The plaintiffs and the classes of citizens they represent are attempting to assist and encourage Negro citizens of the State of Mississippi to exercise their right to register and vote in State and Federal elections in that State. This is an objective [11] guaranteed by the Fifteenth Amendment to the Constitution of the United States.

9. The defendants under color of the laws of the State of Mississippi and in particular under the color of a law of the State of Mississippi entitled House Bill 546, 1964 Session Mississippi Legislature, have entered into a plan or conspiracy with other persons to the plaintiffs presently unknown to subject or cause them and the classes they represent to be subjected to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States as citizens of the United States.

10. House Bill 546, 1964 Session Mississippi Legislature was designed and enacted for the sole purpose of deterring, impeding and intimidating Negro citizens of the State of Mississippi and their white supporters from exercising their federal constitutional rights of freedom of speech, assembly, and the right to petition for redress of grievances all protected by the Constitution and Laws of the United States, in their efforts to obtain the equality guaranteed by the Fourteenth Amendment and the right to vote guaranteed by the Fifteenth Amendment.

11. House Bill 546, 1964 Session Mississippi Legislature is void and illegal on its face and as applied to the plaintiffs herein and the classes they represent, in that the statute violates the Constitution of the United States and in particular the 1st, 5th, 13th, 14th and 15th Amendments thereto. This statute violates on its face and as here applied the fundamental guarantees of free speech, press,

assembly and the right to petition the Government for a redress of grievances. It violates on its face and as here applied the guarantee of due process of law in that it is vague and indefinite and fails to meet the requirements of certainty in criminal statutes. It violates the prohibition [12] against discrimination in the right to vote by reason of race and color in that it is designed and so operates as to impede and deter the Negro citizens of Mississippi from attempting to exercise their right to register and vote in elections. A copy of the Statute is affixed hereto as Exhibit "A" and made a part hereof.

12. Pursuant to the aforesaid conspiracy and plan the defendants and others acting in concert with them have threatened and continue to threaten to enforce this unconstitutional, void and illegal state statute against the plaintiffs and the classes they represent for the avowed purpose of intimidating them from exercising rights guaranteed to them under the Laws of the United States in particular Title 42 USC 1971, 1983, 1985 as well as the Constitution of the United States.

13. In further pursuance of this conspiracy and plan the defendants and others acting in concert with them have attempted and continue to attempt to prosecute the plaintiffs and the classes they represent under this void and illegal state law for engaging in the peaceful constitutional exercise of the rights of free speech, assembly and the petition for redress of grievances as part of their efforts in the current Voter Registration Campaign in Forrest County, Mississippi.

14. Furthermore, on April 9, 1964, while engaged in the peaceful exercise of constitutional protected rights of free speech, assembly and the right to petition, plaintiff Cameron and other members of the class he represents were threatened with arrest for violation of said void and illegal State Statute, and on April 10, 1964, were arrested by agents of the defendants for alleged violation of the statute.

15. Since April 10, 1964, up to and including the present, at least 48 persons including the plaintiff Cameron, all members [13] of the classes here represented have been arrested by the defendants and their agents under the provisions of this illegal and void statute.

16. Since April 10, 1964, there are now pending in the County Court for Forrest County, Mississippi, at least 48 prosecutions for alleged violations of this illegal and void statute. The prosecutions, all against members of the classes here represented, are based solely upon the peaceful exercise of rights guaranteed under the First and Fourteenth Amendments of the Constitution of the United States.

17. Plaintiff Gray and many other members of the classes here represented have been and continue to be threatened with arrest under the provisions of this void and illegal statute by the defendants and their agents. These threatened arrests are solely for the purpose of intimidating and deterring the plaintiffs and the classes they represent from exercising rights guaranteed to them under Title 42 USC 1971 and the Fifteenth Amendment as well as rights guaranteed under the First and Fourteenth Amendments.

18. Unless this Court restrains the operation and enforcement of this void, illegal and unconstitutional state statute, the plaintiffs and the classes they represent will suffer and continue to suffer immediate and irreparable injury.

The sole purpose, intention and effect of enforcing and threatening to enforce this state statute is to deter, intimidate, hinder and prevent the plaintiffs and the class of Negro citizens of the City of Hattiesburg and the State of Mississippi, together with their white supporters, from exercising their fundamental constitutional rights guaranteed under the First and Fourteenth Amendments in their efforts to enforce the freedom and equality for the Negro guaranteed by the Thirteenth and Fourteenth Amendments and the right to vote guaranteed by the [14] Fifteenth Amendment.

Accordingly unless this Court forthwith restrains the operation and enforcement of this void, illegal and unconstitutional state statute, the plaintiffs and the classes they represent will continue to suffer the most serious, immediate and irreparable injury in that they will continue to be deterred, intimidated, hindered and prevented from exercising elementary and fundamental Federal constitutional rights.

19. Plaintiffs have no adequate remedy at law.

20. No previous application for this relief has been made.

WHEREFORE, Plaintiffs pray for the following relief:

1. That pursuant to Title 28 USC 2281 and 2284 a three-judge Federal District Court be immediately convened to hear and determine this matter;

2. That a permanent injunction issue

(a) restraining the defendants, their agents, attorneys and all others acting in concert with them from the enforcement, operation or execution of House Bill 546, 1964 Session Mississippi Legislature in any manner whatsoever

and (b) restraining the defendants, their agents, attorneys and all others acting in concert with them from impeding, intimidating, hindering and preventing the plaintiffs or members of the classes they represent from exercising rights, privileges and immunities guaranteed to them by the Constitution and Laws of the United States.

3. That a Declaratory Judgment issue declaring that House Bill 546, 1964 Session Mississippi Legislature is null and void and of no effect as violative of the Constitution of the United States.

4. That pending the hearing and determination of these [15] prayers for permanent relief an interlocutory injunction issue restraining the defendants, their agents, attorneys and all others acting in concert with them from (a) enforcing in any manner the provisions of House Bill 546, 1964 Session, Mississippi Legislature. (b) from arresting the plaintiffs or members of the classes they represent for alleged violations of said statute, (c) from instituting, undertaking, or continuing any criminal proceedings whatsoever pursuant to said statute against the plaintiffs and the members of the classes they represent, either in the County Court for Forrest County, Mississippi or in any State Court in Mississippi.

5. That pending the determination of the motions for interlocutory relief a temporary restraining order issue, restraining the defendants, their agents, attorneys, and all others acting in concert with them in the manner as prayed for in paragraph 4 of this prayer for relief.

Plaintiffs respectfully pray that the above relief be granted.

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[16]

EXHIBIT "A"

House Bill 546, 1964 Session Mississippi Legislature

"Be it enacted by the Legislature of the State of Mississippi: "

Section I: It shall be unlawful for any person, singly or in concert with others to engage in picketing or demonstrations in such a manner as to obstruct or interfere with free ingress or egress to and from any public premises, State property, County or municipal court houses, city halls, office buildings, jails or other public buildings or property owned by the State of Mississippi or any county or municipal government located therein or with the use of public property or administration of justice therein or thereon conducted or so as to obstruct or interfere with free use of public streets, side-walks or other public ways adjacent or contiguous thereto.

Section II: Any person guilty of violating this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined no more than Five Hundred and No/100 (\$500.00) Dollars or imprisoned in jail not more than six (6) months or both such fine and imprisonment.

Section III: This act shall take effect and be in force from and after its passage."

[17]

SUPPLEMENTAL COMPLAINT

Plaintiffs supplement and amend their original complaint in the following respects:

I

Not only is House Bill 546 now signed into law in Mississippi unconstitutional, but it is unconstitutionally applied and used in that since its enactment at least 48 persons have been arrested under its provisions and charged in the County Court of Forrest County Mississippi with having violated it; all of those being friends and supporters of the plaintiffs herein.

II

That pending the issuance of any order from any court convening under this complaint, there should be issued a temporary restraining order prohibiting the enforcement of said statute inasmuch as its enforcement has caused the plaintiffs particularly and the Negro race and their supporters generally in Mississippi irreparable injuries in their efforts to register and vote, and will continue to do so in the future, since the State authorities of Mississippi have avowed the strict enforcement of the statute.

III

That James K. Dukes, who should be substituted as a party defendant for Joe R. King erroneously cited County Attorney for Forrest County, has vowed strict enforcement of this statute.

IV

That there are now pending in the County Court for Forrest County of Mississippi 48 prosecutions for alleged [18] violations of this statute, all based on the defendants' and others' exercise of First and Fourteenth Amendment rights in the current Voter Registration Campaign in Forrest County.

WHEREFORE, plaintiffs pray that a temporary restraining order issue herein forbidding the enforcement of House Bill 546 as enacted into law pending the ruling of the Three-Judge Court herein requested.

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[19]

ANSWERS OF DEFENDANTS

Come Paul B. Johnson, individually and as Governor of the State of Mississippi, James K. Dukes, individually and as County Attorney of Forrest County, Mississippi, James Finch, individually and as District Attorney of Forrest County, Mississippi and Bud Gray, individually and as Sheriff of Forrest County, Mississippi, Defendants, and file herewith their answer to the Amended Complaint filed in this action:

1. Defendants admit the allegations of Paragraphs 2, 3, 4 and 5 of the Amended Complaint.

2. Defendants are without information sufficient to form a belief as to the allegations of Paragraph 8 of the Amended Complaint and, therefore, deny the same.

3. Defendants deny the allegations of Paragraph 9 of the Amended Complaint.

4. Defendants deny the allegations of Paragraph 10 of the Amended Complaint.

[20] 5. Defendants deny the allegations of Paragraph 11 of the Amended Complaint.

6. Defendants deny the allegations of Paragraph 12 of the Amended Complaint.

7. Defendants deny the allegations of Paragraph 13 of the Amended Complaint.

8. Defendants deny the allegations of Paragraph 14 of the Amended Complaint.

9. Defendants admit that since April 10, 1964, numerous persons, including Plaintiff Cameron, have been arrested and charged with the violation of House Bill 546 of the 1964 Session of the Mississippi Legislature, but deny that they were arrested by the Defendant Johnson, the Defendant Dukes or the Defendant Finch or any of their agents. They are without information sufficient to form a belief as to whether or not the persons arrested are members of any class purportedly represented by Plaintiffs, and therefore, deny the same. They deny that the said statute is illegal or void all as charged in Paragraph 15 of the Amended Complaint.

10. Defendants deny the allegations of Paragraph 16 of the Amended Complaint.

11. Defendants deny the allegations of Paragraph 17 of the Amended Complaint.

12. Defendants deny the allegations of Paragraph numbered 18 of the Amended Complaint and each and every allegation contained in the subparagraphs therein.

13. Defendants deny the allegations of Paragraph 19 of the Amended Complaint.

[21-22] 14. Defendants admit the allegations of Paragraph 20 of the Amended Complaint.

Further answering the Amended Complaint, Defendants would show unto the Court that the issues of the unconstitutionality on its face, of House Bill 546 of the 1964 Session of the Mississippi Legislature, and the unconstitutional application and use of said statute have been raised by the complainant Cameron and are now pending in the State Courts of Mississippi as shown by a copy of a Motion to Quash filed in the County Court of Forrest County, Mississippi, which copy was attached to the Answer to the original complaint filed in this cause by the Defendant James Finch and which said copy, or exhibit, is adopted as a part of this answer and prayed to be taken and considered by the Court in connection with this answer.

WHEREFORE, Defendants pray that this action be dismissed at the cost of Plaintiffs.

• • • • •

[23] SEPARATE ANSWER OF PAUL B. JOHNSON, JR., INDIVIDUALLY AND AS GOVERNOR OF THE STATE OF MISSISSIPPI

Comes Paul B. Johnson, Jr., individually and as governor of the State of Mississippi and files herewith his Answer to the Complaint filed against him in the above styled and numbered action:

1. Defendant is without information sufficient to form a belief as to the allegations of Paragraph 1 of the Complaint and, therefore, denies the same.

2. Defendant admits the allegations of Paragraph 2 of the Complaint.

3. Defendant denies that Joe R. King is County Attorney of Forrest County, Mississippi, but admits that he is a resident of the State of Mississippi, all as charged in the third paragraph of the Complaint, improperly designated as Paragraph 2.

4. Defendant admits the allegations of Paragraph numbered 3 of the Complaint.

[24] 5. Defendant denies that Robert Walker is Sheriff of Forrest County, Mississippi but admits that he is a resident of the State of Mississippi.

6. Defendant denies the allegations of Paragraph numbered 5 of the Complaint.

7. Defendant denies the allegations of Paragraph numbered 6 of the Complaint.

8. Defendant denies that under color of House Bill 546, 1964 Session of the Mississippi Legislature he has entered into a plan or conspiracy with any person to subject or cause plaintiffs to be subjected to the deprivation of any rights, privileges or immunities secured to them by the Constitution and laws of the United States.

9. Defendant again denies that he is a member of any conspiracy and denies that he has attempted to or threatened to continue to attempt or to prosecute the complainants under the color and authority of House Bill 546 or under any other statute or law; all as charged in Paragraph numbered 7 of the Complaint.

10. Defendant is without information sufficient to form a belief as to the allegations of Paragraph numbered 8 of the Complaint and, therefore, denies the same.

11. Defendant is without information sufficient to form

a belief as to the allegations of Paragraph numbered 9 of the Complaint and, therefore, denies the same.

12. Defendant denies the allegations of Paragraph numbered 10 of the Complaint.

13. Defendant denies the allegations of Paragraph numbered 11 of the Complaint.

[25] 14. Defendant is without information sufficient to form a belief as to the allegations of Paragraph numbered 12 of the Complaint, and therefore, denies the same.

15. Defendant denies the allegations of Paragraph numbered 13 of the Complaint.

16. Defendant denies the allegations of Paragraph numbered 14 of the Complaint.

17. Defendant denies the allegations of Paragraph numbered 15 of the Complaint.

18. Defendant denies the allegations of Paragraph numbered 16 of the Complaint.

Further answering the Complaint, Defendant would show unto the Court that the same issue as to the constitutionality on its face of House Bill 546 of the Laws of the 1964 Regular Session of the Mississippi Legislature and the issue of the said act of the Legislature being unconstitutionally applied and used as are raised in this action have been raised by Plaintiffs and are now pending in the State Courts of Mississippi as is shown by a copy of a motion to quash filed in the County Court of Forrest County, Mississippi, which is attached hereto and made a part of this answer.

WHEREFORE, Defendant prays that this action be dismissed as to him at the cost of Plaintiffs.

• • • • • • •

**[26] SEPARATE ANSWER OF JAMES FINCH INDIVIDUALLY AND
AS DISTRICT ATTORNEY OF FORREST COUNTY, MISSISSIPPI**

Comes James Finch, individually and as District Attorney of Forrest County, Mississippi and files herewith his answer to the Complaint filed against him in the above styled and numbered action:

1. Defendant admits the allegations of Paragraph 1 of the Complaint.

2. Defendant admits the allegations of Paragraph 2 of the Complaint.

3. Defendant denies that Joe R. King is County Attorney of Forrest County, Mississippi but admits that he is a resident of the State of Mississippi; all as is charged in the third paragraph of the Complaint, improperly marked Paragraph No. 2.

4. Defendant admits the allegations of Paragraph numbered 3 of the Complaint.

[27] 5. Defendant admits that Robert Walker is the Sheriff of Forrest County, Mississippi, but admits that he is a resident of the State of Mississippi.

6. Defendant denies the allegations of Paragraph numbered 5 of the Complaint.

7. Defendant denies the allegations of Paragraph numbered 6 of the Complaint.

8. Defendant denies that under color of House Bill 546 of the Laws of the 1964 Regular Session of the Mississippi Legislature, he has entered into any plan or conspiracy with any person to subject or cause to be subjected, the complainants or either of them to the deprivation of any rights, privileges or immunities secured to them or either of them by the Constitution and laws of the United States.

9. Defendant denies the allegations of Paragraph numbered 7 of the Complaint.

10. Defendant admits that on April 9, 1964, House Bill 546, as described, was read to certain persons in the City of Hattiesburg, Forrest County, Mississippi. He admits that on April 10, 1964, the Complainant Cameron was arrested and charged with a violation of said statute. He denies that Complainant Gray continually faces the threat of arrest under said statute.

11. Defendant denies the allegations of Paragraph numbered 10 of the Complaint.

12. Defendant again denies that he has entered into a conspiracy or plan with any person and denies all other allegations of Paragraph numbered 11 of the Complaint.

[28] 13. Defendant is without information sufficient to form a belief as to the allegations of Paragraph 12 of the Complaint, and therefore, denies the same.

14. Defendant denies the allegations of Paragraph numbered 13 of the Complaint.

15. Defendant denies the allegations of Paragraph numbered 14 of the Complaint.

16. Defendant denies the allegations of Paragraph numbered 15 of the Complaint.

17. Defendant denies the allegations of Paragraph numbered 16 of the Complaint.

Further answering the Complaint, Defendant would show unto the Court that the issues of the unconstitutionality on its face of House Bill 546 of the 1964 Session of the Mississippi Legislature and the unconstitutional application and use of said statute have been raised by the Complainant Cameron and are now pending in the State Courts of Mississippi as shown by a copy of a motion to quash filed in the County Court of Forrest County, Mississippi, which copy is hereto attached and made a part of this instrument.

WHEREFORE Defendant prays that this action be dismissed as to him at the cost of Plaintiffs.

* * * * *

[29] OPINION OF UNITED STATES DISTRICT COURT JULY 14,
1964

Before RIVES, Circuit Judge, and Cox and MIZE, District Judges.

MIZE, District Judge: Plaintiffs, The Reverend John Earl Cameron and Mrs. Victoria Jackson Gray, filed an original complaint against Paul Johnson, Governor of the State of Mississippi; Joe R. King, County Attorney of Forrest County, Mississippi; James Finch, District Attorney of Forrest County, Mississippi; and Robert Walker, Sheriff of Forrest County, Mississippi, as Defendant, seeking a declaratory judgment and injunction, and attacking the constitutionality of House Bill No. 546 Laws of 1964 of the Legislature of the State of Mississippi. Subsequently they filed an amended bill of complaint by which they substituted James K. Duke in the place and stead of Joe R. King as County Attorney, and substituted W. G. (Bud) Gray in the place and stead of Robert Walker as Sheriff of Forrest County, Mississippi, and by the amended complaint averred the suit as a class action, as they had not done in the original complaint, and at the hearing of the case on the merits it was agreed that the issues in the case are fully stated and made by the amended complaint and the answers of the Defendants.

The Act under attack reads as follows:

[30] HOUSE BILL No. 546

An Act to Prohibit the Unlawful Picketing of State Buildings, Courthouses, Public Streets, and Sidewalks.

Be It Enacted By the Legislature of the State Of Mississippi:

Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to obstruct or interfere with free ingress or egress to and from any public premises, State property, county or municipal courthouses, city halls, office buildings, jails, or other public buildings or property owned by the State of Mississippi or any county or municipal government located therein or with

the transaction of public business or administration of justice therein or thereon conducted or so as to obstruct or interfere with free use of public streets, sidewalks or other public ways adjacent or contiguous thereto.

Section 2. Any person guilty of violating this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars (\$500.00), or imprisoned in jail not more than six (6) months, or both such fine and imprisonment.

Section 3. This act shall take effect and be in force from and after its passage.

The Plaintiffs are Negro citizens of Forrest County, Mississippi. On April 27, 1964, prior to the amended complaint, a supplemental complaint was filed bringing in additional plaintiffs who joined in the allegations of the original Plaintiffs and made further allegations with reference to themselves.

It is the contention of the Plaintiffs that the statute is unconstitutional on its face in that it is broad in its sweep, so vague and indefinite in its definition and characterization of prohibited activity that it fails to meet the minimal standards of the First and Fourteenth Amendments; (2) that it is void as violative of the due process guaranty of the Fourteenth and Fifteenth Amendments; and (3) that it is contrary to the First Amendment in that it attempts to limit the right to picket by connecting it with vague and indefinite standards.

It is the contention of the Defendants that the statute is constitutional on its face and within the police powers of the State; (2) that the Plaintiffs have a full, complete [31] and adequate remedy at law and that before the Plaintiffs can attack the constitutionality of the Act they must first exhaust the statutory remedies in the State courts; (3) that this Court as a Federal Court should abstain from passing upon the constitutionality of the statute until the State has first had an opportunity to pass on its constitutionality; that, also, the Defendants have raised the question of unconstitutionality in the State court where they are being prosecuted.

We agree with the contention of the Defendants. Title 28, U.S.C., Section 2283, provides as follows:

"A Court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress or when necessary in aid of its jurisdiction or to protect or effectuate its judgments."

This statute, of course, is not jurisdictional, but expresses very clearly and definitely the policy and thinking of Congress. Such a statute has been on the books for many years and still stands in the above quoted form. Certainly there are times and occasions which are exceptional, when it is proper for the Court to enjoin the prosecution of a criminal case, but the facts of this case and of this record do not approach such a situation. This statute is one of comity existing between the Federal Courts and the State Courts and it is the policy of the Federal Courts to follow the statute, unless the exigency of the occasion requires that an injunction be issued. An injunction in any case is an unusual and extra-ordinary writ or remedy and is used with great caution. When there is a plain, adequate and complete remedy at law, the Federal Courts will abstain. It is the duty of petitioners of this type to exhaust first all state remedies.

It is well settled that a Court will not pass on the constitutionality of an Act of Congress or of a Legislature unless it is necessary to a determination of the controversy [32] by the Court. In this case it is not necessary to pass on the constitutionality of this Act, even though there can be slight doubt as to its constitutionality, and where it is rather clear that it is constitutional, the Court leans to a doctrine hereinbefore announced of abstention until it is passed upon by the courts of the State.

The main attack on this Act is that it is vague, uncertain, and fails to define any standard by which one could understand an indictment or criminal information. This argument is not sound. There is no basis of fact in this record or by a reasonable construction of the statute by which its constitutionality could be doubted. The Plaintiffs in this case and their attorneys place their attack on the Act upon the ground that it is an effort by the State to prevent Negroes from registering for voting purposes. They contend that the Defendants in this case have conspired to prevent the Negro citizens of Forrest County from reg-

istering. Such is not the case. That was not the purpose of the statute. The statute does not undertake in the slightest degree to condemn picketing or registering or any peaceable conduct of any citizen. There is a well settled principle of law and, in addition thereto, a statute in Mississippi to the effect that words and phrases in an Act are given their usual and ordinary construction unless the Act indicates to the contrary. Applying this rule of law to the Act here under attack, it is clear that picketing or peaceful demonstrations are not condemned, nor are expressions of opinion. Let us emphasize the gist and purpose of the Act, and it reads:

"It shall be unlawful for any person, singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to Obstruct or Interferé With Free Ingress or Egress To and From Any Public Premises, State Property, County or Municipal Courthouses, City Halls * * * * or Other Buildings * * * * or With the Transaction of Public Business or Administration of Justice Therein or Thereon Conducted or so as to Obstruct or Interfere with Free Use of the Public Streets * * * *"

[33] Thus it is readily seen that what the Act condemns, after defining the places, is the obstruction of the free ingress and egress to and from the buildings. The word "obstruction" has a definite meaning and has been construed by the Supreme Court of Mississippi under a similar statute where the word "obstruction" was the main point of the case. This is the case of *State v. Lucas*, 73 So. (2) 158. In this case Lucas was charged with obstructing a railroad by an indictment. The lower court sustained a demurrer on the ground that the statute under which he was indicted was unconstitutional. The Supreme Court unanimously reversed and remanded, holding the Act to be constitutional. The Act under attack there was Section 2340 of the Mississippi Code of 1942, which reads:

"Railroads—Wantonly or negligently obstructing or injuring—If any person shall wantonly or negligently obstruct or injure any Railroad, upon conviction he shall be fined not more than \$2,000.00 or imprisoned no longer than twelve months in the county jail, or both."

The Defendant was indicted for negligently and wantonly leaving his unattended automobile parked on said railroad at a crossing of said railroad and the private road for automobiles. The Court said:

"Appellee says the statute is unconstitutional or that it does not sufficiently define the elements constituting the crime and the indictment is void because it does not sufficiently inform the defendant of the acts he is charged to have committed."

The Court further said:

"But we should give to the word its ordinary and usually accepted meaning, looking to the end to be accomplished, and doing that, we think it means the railroad track—the part of the right of way occupied by the tracks over which the trains, cars, etc. are transported. The meaning of the indictment is that appellee obstructed the tracks of the railroad."

The Court then took up the definition of the word "obstruct", since appellee was contending that it was too broad and general, and cited Webster's International Dictionary, 2d Edition, defining the word "obstruct", all of which definitions in the dictionary are complete within [34] themselves. Among others, it means to block up, to stop up, or to close as a way. The Court then says:

"The objects of the statute under consideration, construed by the section immediately following it, are to prevent interference with the proper use of the railroad in carrying out its functions and to protect its property, passengers and servants from injury or probable injury."

The above case was decided in June, 1954. See also, Words and Phrases, 2d Ed., Vol. 29, defining the word "obstruct" and the words "interfere with".

On the definite, positive, unequivocal and certain meaning of the word "obstruct", a statute containing it advises the public what it condemns. One charged with obstruction by an indictment is entitled to a trial and then it is a question for the Court to determine whether the facts proven against him show him to be guilty.

One of the leading cases, familiar to all lawyers in the

courts, is that of *Douglas v. Jeannette*, 319 U.S. 157. At page 163 of the report the Supreme Court used this language:

"Congress, by its legislation, has adopted the policy, with certain well defined statutory exceptions, of leaving generally to the state courts the trial of criminal cases arising under state laws, subject to review by this court of any federal questions involved. Hence, courts of equity in the exercise of their discretionary powers should conform to this policy by refusing to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent; and equitable remedies infringing this independence of the states—though they might otherwise be given—should be withheld if sought on slight or inconsequential grounds." *Giovanni v. Camden Ins. Ass'n*, 296 U.S. 64; *Matthews v. Rodgers*, 284 U.S. 521; cf. *United States ex. rel. Kennedy v. Tyler*, 296 U.S. 13; *Massachusetts State v. Benton*, 272 U.S. 525, cited by them.

In that same case, *supra*, Mr. Chief Justice Stone used this impressive language:

"It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecution. No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is no ground for equity relief since the lawfulness or constitutionality of the statutes or ordinance under which the prosecution is brought may be determined as readily in a criminal case as in a suit for injunction."

There is a long line of decisions by the Supreme Court [35] of the United States upholding this doctrine. See *Davis v. Burke*, 179 U.S. 399; 45 Law Ed. 249. *Ex Parte Hawk*, 321 U.S. 114; 88 Law Ed. 572. *Stack v. Boyle*, 342 U.S. 1; 96 Law Ed. 3. *Brown v. Allen*, 344 U.S. 443; 97 Law Ed. 469. *Amalgamated Clothing Workers of America v. Richman Bros. Co.*, 348 U.S. 511; 99 Law Ed. 600.

With reference to the statute prohibiting an injunction to stay proceedings in a state court, 28 USCA, Sec. 2283,

in the Amalgamated case, *supra*, the Supreme Court approved the action of the Court of Appeals denying the injunction, holding that the quoted statute constituted "Legislative policy . . . in a clear cut prohibition; qualified only by specifically defined exceptions."

See also *Snowden v. Hughes*, 321 U.S. 1; 88 Law Ed. 497. *Schwartz v. Texas*, 344 U.S. 199; 97 Law Ed. 231.

In *Speiser v. Randall*, 357 U.S. 513, the *Jeannette* case was cited in a concurring opinion by Mr. Justice Black in support of a different point from that under consideration. *Jeannette* was also cited in the majority in *Monroe v. Pape* 365 U.S. 167 and in the dissenting opinion by Mr. Justice Frankfurter in that case.

See also *Stefanelli v. Minard*, 342 U.S. 117 and *Darr v. Burford*, 339 U.S. 200.

The statute which prohibits federal courts granting injunctions to stay proceedings in a state court is very similar to the statute, in its language, which prohibits the federal courts from issuing a writ of habeas corpus in behalf of a person in custody pursuant to a judgment of the state court, unless it appears that the applicant has exhausted remedies available to him in the courts of the state, with certain exceptions, because it is the statement of the policy by Congress that the federal courts shall not interfere with state proceedings except under unusual circumstances.

[36] This statute with reference to habeas corpus arose in the case of the application of Elizabeth Wyckoff in the Southern District of Mississippi and the opinion of the District Judge is reported 196 Fed. Sup. 515. This is a case that is very applicable to the facts of the case that is here pending. Wyckoff was in jail and sought a writ of habeas corpus, but it appeared from the statutes of the State of Mississippi that she had a complete, adequate and full remedy at law under the laws of the State, and the opinion in that case outlines the procedure that the State has or gives to one who is unable to pay costs or give bond, etc. In that case several quotations specifically point up quotations from the Supreme Court of the United States in some of the cases that have been hereinbefore cited. The District Court denied the writ of habeas corpus to Wyckoff and the applicant appealed to the Court of Appeals for the Fifth Circuit. The Court of Appeals

affirmed the District Court. I do not find where the opinion of the Court of Appeals is reported in the Federal Reporter, but it is reported in 6 Race Relations Law Reporter, 793. Again the opinion of the Court of Appeals is approved in the case of James Brown, et al v. Rayfield, 320 Fed. (2d) 196. In the case of Rayford, who is Chief of Police of the City of Jackson, Mississippi, Chief Judge Tuttle, being the organ of the Court, quoted from the Wyckoff case with approval on similar facts and again approved the order of the District Court in denying the petition for writ of habeas corpus. The petitioners then made an application to Mr. Justice Black and Mr. Justice Clark who were acting jointly as members of the United States Supreme Court for the grant of the petition for habeas corpus. In denying the application those justices stated:

"The petition for habeas corpus is denied because the factual allegations fall short of showing that there are [37] no Mississippi State processes available by appeal or otherwise for petitioners to challenge that state conviction, which processes would effectively protect their constitutional rights, particularly since any denial of such rights by the highest court of the state can be remedied by appropriate appellate proceedings in the Supreme Court of the United States."

The Fifth Circuit again approved the same principle in the per curiam opinion in the case of Green v. Balkcom, Warden of the Georgia State Prison, decided April 23, 1964, reported in 331 Fed. (2d) 742 and dismissed the petition for writ of habeas corpus.

In the case of Allen-Bradley Local No. 1111, et al v. Wisconsin Employment Relations Board, et al, 315 U.S. 740 the Supreme Court of the United States said this:

"Nor will we assume in advance that a state will so construe its law as to bring it into conflict with the Federal Constitution or an Act of Congress."

The case of Wilson v. Schnettler, et al, 365 U.S. 381. is a conclusive authority on the doctrine that when a petitioner has invoked the jurisdiction of the state court the federal court will abstain on the ground that he does have a complete remedy at law and has invoked the jurisdiction of the state court.

In the case at bar the record shows that petitioners have invoked the jurisdiction of the state court of filing a motion to quash the affidavits on the ground that the Act is unconstitutional and the County Court overruled that motion—the exact facts as in the Wilson case. In the Wilson case, at page 384, the Court said:

“Indeed, the allegations of the complaint affirmatively show that petitioner does have a remedy in the Illinois court and that he has actually prosecuted it there, but only to the point of an adverse interlocutory order. That court, whose jurisdiction first attached, retains jurisdiction over this matter to the exclusion of all other courts.”

The source of that holding was the case of *Harkrader v. Wadley*, 172 U.S. 148. In the *Harkrader* case the Supreme Court said:

“While a state court and a court of the United States may each take jurisdiction of a matter, the tribunal where jurisdiction first attaches holds it, to the exclusion of [38] the other, until its duty is fully performed and the jurisdiction involved is exhausted.”

See also *Peck v. Jenness*, 7 Howard 612 and the quotation from it in the footnote.

In the recent case of *NLRB v. Fruit & Vegetable Packers and Warehousemen No. 88*, decided April 20, 1964; Mr. Justice Black's concurring opinion points out that picketing is, of course, conduct and is not speech and, therefore, is not directly protected by the First Amendment. Here, the statute under attack condemns conduct and not picketing or expressions of free speech or of the press. No arrests were made until there was a complete obstruction by the petitioners in such manner as to completely block the entrances and exits of the courthouse doors.

Another recent case decided by the Supreme Court is that of *Lawrence W. Baggett, et al, appellants v. Dorothy Bullitt, et al, appellees*, reported in the U.S. Law Week of date June 6, 1964, page 4425. This case discusses freely the doctrine of abstention and reviews the many cases approving it, as well as those under certain exigencies disapproving it, under the peculiar facts of that case and the further fact that it was not such a statute of a

state as a construction of it by the Supreme Court of the state would aid the federal courts in giving the construction to which it was entitled. A fair conclusion of law, in cases of the types here involved, is that if the petitioners had raised the constitutionality of the law in the state court prior to the suit in federal court, then the latter must abstain, provided the state has processes to pass upon the question presented. If the jurisdiction of the state court has not been sought, even though available, and a litigant seeks the jurisdiction of the federal court to enjoin a state criminal prosecution, it is then the duty of the federal court to exercise sound judicial discretion on the facts of the case presented to determine if it should abstain or if it should [39] proceed. *NAACP v. Button*, 371 U.S. 415; *England v. La. State Board of Medical Examiners, et al*, 84 S. Ct. 461. In the *Wyckoff* case, *supra*, Fed. Sup., the District Court pointed out the complete process by which the speedy determination could be had in a state court of Mississippi, so that the question of delay in the state court to reach a determination of the question is not present.

Many cases have been cited by counsel for plaintiffs touching on freedom of speech and of the press, the right to assemble and the right to picket, which, in our opinion, are not applicable to the facts of the case here; nor does the 1964 Civil Rights Act have any application to these facts. We shall not undertake to differentiate each particular case; however, the case of *Thornhill v. Alabama*, 310 U.S. 88, as an illustration, was a case where a statute was attacked on the ground that it was an abridgment of freedom of speech, press, peaceful picketing, etc. and Mr. Justice Murphy, who delivered the opinion of the Court, at page 105 of the report, said this:

"We are not now concerned with picketing en masse or otherwise conducted which might occasion such imminent or aggravated danger to these interests as to justify a statute narrowly drawn to cover the precise situation giving rise to the danger."

The statute here under attack in no way condemns peaceful picketing or freedom of speech or press. The record shows that for several days there was peaceful picketing and marching and not a single arrest was made,

but on the dates charged in the affidavits the record overwhelmingly shows that en masse and by concerted action the plaintiffs completely blocked ingress and egress to the public offices of Forrest County, Mississippi.

A finding of fact and conclusion of law is prepared separately and filed along with this opinion and made a part [40] of it as if copied herein. We are of the opinion that under the law and the facts of this case it is the duty of the Federal Court to abstain and permit the plaintiffs to pursue their state remedies, as they have already commenced to do.

The complaint and the amended complaint, therefore, will be dismissed and the relief sought will be denied, and the plaintiffs will be assessed with all costs.

S. C. Mize, United States District Judge. Harold Cox, United States District Judge.

(July 11, 1964)

Honorable Richard T. Rives, United States Circuit Judge, Dissenting.

[41]

Filed July 14, 1964

RIVES, Circuit Judge, dissenting:

This purports to be a class action brought on behalf of persons who are attempting by peaceful picketing and demonstrations to enforce the constitutional rights of Negro citizens of Mississippi to register and vote in that State. It seeks to enjoin the enforcement of House Bill 546, 1964 Session Mississippi Legislature, which, after being passed unanimously by both the House and the Senate of the Mississippi Legislature, was approved by the Governor on April 8, 1964. The statute reads as follows:

"An Act to Prohibit the Unlawful Picketing of State Buildings, Courthouses, Public Streets, and Sidewalks.

"Be it Enacted by the Legislature of the State of Mississippi:

"Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to obstruct or interfere with free ingress or egress to and from any public premises, State property, county or municipal courthouses, city halls, office buildings, jails, or other public buildings or property owned by the State of Mississippi or any county or municipal government located therein or with the transaction of public business or administration of justice therein or thereon conducted or so as to obstruct or interfere with free use of public streets, sidewalks or other public ways adjacent or contiguous thereto.

"Section 2. Any person guilty of violating this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars (\$500.00), or imprisoned in jail not more than six (6) months, or both such fine and imprisonment.

"Section 3. This act shall take effect and be in force from and after its passage."

The statute was implemented on the day after its enactment. One of the named plaintiffs, Reverend John Earl

Cameron, was threatened with arrest and on the succeeding [42] day, April 10, he was arrested for violation of the statute. Forty-odd other persons were arrested on the same occasion while picketing the Forrest County Court House in support of the Negro voter registration campaign. Numerous other persons, including the other named plaintiff Mrs. Victoria Jackson Gray, were threatened with arrest but not actually arrested.

This action was instituted on April 13. A hearing on the application for interlocutory injunction was held on April 29, but decision on that application appeared not necessary in view of the commendable action of the Attorney General of Mississippi in securing the postponement of the trial of any prosecutions for violating the statutes until at least July 15, 1964. The cause is now submitted for final decree upon the amended complaint and answer thereto and upon affidavits.

As might be expected, the plaintiffs' affidavits are to the effect that the picketing was peaceful and orderly and did not block any of the entrances or exits of the courthouse, while the defendants' affidavits are diametrically to the contrary and to the effect that the picketing actually obstructed and unreasonably interfered with ingress and egress to and from the courthouse. Photographs of demonstrations are attached to some of the defendants' affidavits. Without the benefit of oral testimony and cross-examination of the witnesses it is impossible to resolve the conflict of testimony.

Similar conflict is to be anticipated in most, if not all, prosecutions under this statute, for what constitutes "obstruction"¹ or "interference" is essentially a matter of [43] opinion.²

In Mississippi, either an officer or a private person may

¹ "Obstruction" of the fixed rails of a railroad track is a far more definite concept. See *State v. Lucas*, Miss. 1954, 73 So. 2d 158; *Turner v. Southern Railway Co.*, Miss. 1916, 73 So. 62.

² See definitions of "obstruct" and "obstruction" in 29 Words & Phrases, Perm. ed., pp. 80, *et seq.* and pocket supplement, and of "interfere" and "interference" in 22 *id.*, pp. 253 *et seq.*, and pocket supplement.

arrest any person without warrant for an indictable offense committed in his presence.³ The initial decision of whether picketing or demonstrations constitute "obstruction" or "interference" will normally be made by the arresting officer or even by a private person serving as a vigilante. This statute thus furnishes the means by which picketing and demonstrations may be practically forbidden—certainly until the prosecutions reach the trial stage.

Picketing is not beyond legislative control, but a statute against picketing must be exact and precise, for example, by limiting the pickets to a certain designated reasonable number or by prescribing that they walk at a certain named reasonable distance from each other. Broad, sweeping and inexact terms of a statute regulating picketing necessarily encroach on freedom of speech and press.⁴

[44] As said in *Shelton v. Tucker*, 1960, 364 U.S. 479, 488:

"In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose."

In a case decided as late as June 22, 1964, the Supreme Court said:

"It is a familiar and basic principle, recently reaffirmed in *NAACP v. Alabama*, U.S. , , that 'a gov-

³ Mississippi Code 1942, sec. 2470.

⁴ *Thornhill v. Alabama*, 1940, 310 U.S. 88, 100, 101; *Carlson v. California*, 1940, 310 U.S. 106, 112; *Edwards v. South Carolina*, 1963, 372 U.S. 229, *Henry v. City of Rock Hill*, 1964, 376 U.S. 776.

"Broad prophylactic rules in the area of free expression are suspect. See, e.g., *Near v. Minnesota*, 283 U.S. 697; *Shelton v. Tucker*, 364 U.S. 479; *Louisiana ex rel Gremillion v. NAACP*, 366 U.S. 293. Cf. *Schneider v. Irvington*, 308 U.S. 147, 162. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms," *N.A.A.C.P. v. Button*, 1963, 371 U.S. 415, 438.

ernmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.' See, e.g., *NAACP v. Button*, 371 U.S. 415, 438; *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293; *Shelton v. Tucker*, 364 U.S. 478, 488; *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 239; *Martin v. Struthers*, 319 U.S. 141, 146-149; *Cantwell v. Connecticut*, 310 U.S. 296, 304-307; *Schneider v. State*, 308 U.S. 147, 161, 165."

Aptheker, et al. v. Secretary of State, 1964, 32 L.W. 4611, 4613.

The same opinion quoted with approval from *NAACP v. Button*, 371 U.S. 415, 432, 433, as follows:

"[I]n appraising a statute's inhibitory effect upon such rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar. *Thornhill v. Alabama*, 310 U.S. 88, 97-98; *Winters v. New York*, [333 U.S. 507] 518-520. Cf. *Staub v. City of Baxley*, 355 U.S. 313 The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. Cf. *Marcus v. Search Warrant*, 367 U.S. 717, 733. These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions."

It is difficult to conceive of a statute drawn in broader or more vague and sweeping terms than that here under attack. In my opinion, the statute is so clearly unconstitutional that this case is hardly one "required . . . to be heard and determined by a district court of three judges." 28 U.S.C.A. § 1253. See *Bailey v. Patterson*, 1962, 369 U.S. 31,

vacating and remanding *Bailey v. Patterson*, S.D. Miss. 1961, 199 F.Supp. 595.

[45] On the subject of abstention, I need not repeat in this dissent the argument contained in my dissenting opinion in *Bailey v. Patterson*, *supra*, 199 F.Supp. at 615-618.

The jurisdiction of this Court is invoked under 42 U.S.C.A. § 1983, among other statutes. As was said in *McNeese v. Board of Education*, 1963, 373 U.S. 668, 671, 672:

“That is the statute that was involved in *Monroe v. Pape*, *supra* [365 U.S. 167]; and we review its history at length in that case. 365 U.S., at 171 *et seq.* The purposes were severalfold—to override certain kinds of state laws, to provide a remedy where state law was inadequate, ‘to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice’ (*id.*, 174), and to provide a remedy in the federal courts supplementary to any remedy any State might have. *Id.*, 180-183.

“We would defeat those purposes if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court. The First Congress created federal courts as the chief—though not always the exclusive—tribunals for enforcement of federal rights. . . .”

In my opinion, the statute under attack is clearly unconstitutional, and the plaintiffs are just as clearly entitled to have its enforcement enjoined. I therefore respectfully dissent.

[46] FINDING OF FACTS AND CONCLUSIONS OF LAW,
JULY 14, 1964

This Cause coming on to be heard before the Court on affidavits and photographs presented by the parties under stipulation of counsel as the sole testimony and evidence, and the Court having received and considered such testimony and reasonable inferences deduced therefrom, together with briefs of the parties in support of their respective contentions, makes the following Finding of Facts and Conclusions of Law thereon.

Finding of Facts

This suit is presented on its merits to the Court on the disputed issues of fact and law made by the amended complaint and answer of the defendants thereto. This is a class action by the plaintiffs against the defendants under Civil Rule 23. The defendants are sued as individuals and as officials of the State of Mississippi, County of Forrest and as attorney for the 12th Circuit District of Mississippi. No evidence or testimony was adduced by the plaintiffs to support their charge of the existence of a plan, or conspiracy among the defendants culminating in the passage of House Bill 546, Mississippi Laws 1964; and the Court finds that there was no such plan, or purpose, or design or intendment [47] of House Bill 546, Mississippi Laws 1964; and that no evidence or testimony was adduced by the plaintiffs to show that it was the intent or purpose of said enactment of the Legislature of Mississippi to suppress, deter or in any manner impinge upon, impede or violate any constitutional right of the plaintiffs to free speech, assembly and right to petition for redress of grievances by demonstrating peacefully and lawfully; and more particularly, said Act was not designed or intended to deter, or impede efforts by any citizens to register to vote, or to exercise any other right of a citizen.

House Bill 546, Mississippi Laws 1964 was passed into law in Mississippi on April 8, 1964. The courts of Mississippi have not construed the Act, or passed on its constitutionality. The plaintiffs in this case have presented to the county court of Forrest County, Mississippi, a court of general jurisdiction having full jurisdiction of all of the

parties and the subject matter hereof, in the case of *State of Mississippi v. Ruth Campbell, et al*, (including all plaintiffs herein) in Cause No. 7781-7824 on the docket of said court, the question of the constitutional validity of said House Bill 546, Mississippi Laws 1964, by a motion to quash the information, or affidavit on which such prosecution was commenced and will be prosecuted; and that said court in due course duly overruled said motion; and said plaintiffs (defendants there) have the right of appeal from said decision to the circuit court of Forrest County, Mississippi, thence to the Supreme Court of the State of Mississippi, and thence to the Supreme Court of the United States, if necessary or desired, in furtherance of their effective and efficient statutory remedy fully available to them and being currently pursued at this time.

[48] The Court expressly finds under such facts and circumstances that no need or necessity exists for this Court to pass upon the constitutionality of House Bill 546, Mississippi Laws 1964; and that it is the duty of this Court under such circumstances not to pass upon the constitutionality of said enactment, unless absolutely compelled to do so, but that this Court is duty bound to follow decisions of the Supreme Court of the United States, and of the United States Court of Appeals for the Fifth Circuit which impel this Court to abstain from making any decision on such questions presented under the circumstances stated.

This Court simply does not believe and rejects as false the affidavits presented by the plaintiffs to show that they were engaged in "peaceful" and "lawful" picketing when arrested under this statute on the two occasions in suit. The facts as shown by a clear preponderance of the evidence are to the effect that the plaintiffs in this case did engage in peaceful and thus lawful picketing on other occasions, but that on the occasions in suit when some of the plaintiffs were arrested and charged with violating this Act, that such persons deliberately and intentionally blocked the sidewalk and one of the entrances to the county courthouse in Forrest County, Mississippi, by walking so close together as to make use of such entrance and exit to and from said county courthouse by the officials and business visitors impossible. No peace officers on said scene at any time interfered with the plaintiffs when they picketed in such number and at such

distance apart on said sidewalk at such entrance to said public building as to allow other citizens to make reasonable [49] use of such facilities for its intended purpose. The Court, therefore, further finds as a fact that the State of Mississippi is prosecuting the plaintiffs in the state court under said picketing statute in good faith, and is fully entitled under the law to do so to conclusion of such prosecution, but this Court indicates nothing as to the guilt or innocence of the plaintiffs as defendants in said proceedings.

The full right of the plaintiffs to free speech, assembly and petition were at all times completely preserved and properly respected by the peace officers at the scene of this incident at all times while the plaintiffs were peacefully and lawfully exercising such well recognized and well known constitutional rights. But these plaintiffs intentionally and deliberately so conducted themselves on these occasions in suit by such a large group of persons appearing in such a small, crowded area and so close together as to flaunt and invade the rights of others entitled to make necessary business use of said public premises by making ingress and egress to and from the courthouse of said county impossible by the presence of such human barriers and obstructions and impediments in said public passageway.

The Court thus further finds from the testimony adduced in this case that no Civil Rights of any plaintiff in this case has been, or was violated, or impinged upon by their arrest and consequent prosecution under the facts and circumstances stated.

[50]

Conclusions of Law

This Court has full jurisdiction of the parties to this suit and of the subject matter of this suit; and has the full power and authority to do all that is herein done.

There is no need or necessity for this Court to pass upon the constitutionality of House Bill 546, Mississippi Laws 1964, and this Court, therefore, declines to do so.

The cases impelling abstention by this Court under the facts and circumstances in this case are myriad; and this Court yields to the justice and propriety of such doctrine under the facts and circumstances in this case, and thus abstains from making any decision or disposition of this controversy between these plaintiffs and the state prosecut-

ing authorities. The supporting authorities cited in the accompanying majority opinion of this Court, show and even demonstrate that no constitutional right of any of the plaintiffs will be violated by a prosecution of them under this Act in the state court for such offense with all constitutional safeguards and efficient remedies fully available to them at all times in the state courts. The plaintiffs have commenced, but have not exhausted the efficient and effective remedies and defenses available to them in the state court in said cases and are not entitled to any injunctive relief from this Court against the prosecution of said cases in the state courts.

An injunction is never strictly a matter of right even to prevent irreparable injury, but the right to such writ always reposes within the sound judicial discretion of the [51] Court to which such application is addressed. There is no evidence in this case to show that any danger of irreparable loss to the plaintiffs is either great or immediate, and the Court finds that there are no exceptional circumstances in this case to evoke the issuance by this Court of such extraordinary process. Under the facts and under the rules of applicable law in this case, the plaintiffs are not entitled to any injunctive relief herein.

Accordingly, the amended complaint is not supported by any substantial, credible evidence to support or justify the relief requested. It is the conclusion of this Court in the exercise of its sound judicial discretion, that such extraordinary relief is not due or suggested in this case, and in furtherance of the doctrine of abstention, that the amended complaint of the plaintiffs is without merit and should be dismissed at the cost of the plaintiffs to be taxed under the rules of this Court.

July 10, 1964.

Harold Cox, United States District Judge. Sidney
C. Mize, United States District Judge.

Honorable Richard T. Rives, United States Circuit Judge,
dissenting.

[52] NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES

I. Notice is hereby given that appellants hereby appeal to the Supreme Court of the United States from the judgment of this Court rendered on or about July 11, 1964 dismissing the complaint herein, and from each and every part thereof.

II. The clerk will please prepare a transcript of the record in this case, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Original amended complaints of appellants.
2. Motion for convening of a three-judge federal court.
3. All Answers of the appellees.
4. All affidavits presented by appellants and appellees.

[53] 5. Majority opinion and findings of fact of the District Court Judges and the dissenting opinion of the Circuit Judge.

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[54] OPINION OF THE UNITED STATES DISTRICT COURT,
DECEMBER 24, 1966

Before RIVES and COLEMAN, Circuit Judges, and Cox,
District Judge.

COLEMAN, Circuit Judge.

This is the second time this case has been before this Court for hearing and decision. Invoking Title 42, U.S.C., §§ 1971, 1983, and 1985, the plaintiffs originally filed their complaint on April 13, 1964, against the governor of Mississippi and various officials in Forrest County, Mississippi. They sought a declaratory judgment and injunction, attacking the constitutionality of House Bill No. 546 of the Laws of Mississippi of 1964.¹ By appropriate amendments,

¹

House Bill No. 546

An Act to Prohibit the Unlawful Picketing of State Buildings, Courthouses, Public Streets, and Sidewalks.

Be it Enacted by the Legislature of the State of Mississippi:

Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to obstruct or [unreasonably] interfere with free ingress or egress to and from any public premises, State property, county or municipal courthouses, city halls, office buildings, jails, or other public buildings or property owned by the State of Mississippi or any county or municipal government located therein or with the transaction of public business or administration of justice therein or thereon conducted or so as to obstruct or [unreasonably] interfere with free use of public streets, sidewalks or other public ways adjacent or contiguous thereto.

Section 2. Any person guilty of violating this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars (\$500.00), or imprisoned in jail not more than six (6) months, or both such fine and imprisonment.

the suit became a class action and plaintiffs seek to enjoin the prosecutions already begun as well as the future enforcement of the statute.

[55] The first hearing was before Circuit Judge Rives and District Judges Mize and Cox. Upon full hearing, relief was denied. The findings of fact, conclusions of law, and opinion of the Court are reported at 244 Fed. Supp. 846 (1964).

Judge Rives dissented, being of the view that it would be "difficult to conceive of a statute drawn in broader or more vague and sweeping terms than that here under attack. In my opinion, the statute is so clearly unconstitutional that this case is hardly 'one required * * * to be heard and determined by a District Court of three judges' [citing authorities]." Moreover, he was of the opinion that the doctrine of abstention should not have been invoked and that the plaintiffs were clearly entitled to an injunction.

Upon appeal to the Supreme Court, the judgment was vacated, 381 U.S. 741, 85 S.Ct. 1751, L.Ed.2d (June 7, 1965). The case was remanded "for reconsideration in the light of *Dombrowski v. Pfister*, 380 U.S. 479." We were given the following specific directions:

"On remand, the District Court should first consider whether 28 U.S.C. § 2283 (1958 ed.) bars a federal injunction in this case, see 380 U.S., at 484, n. 2. If § 2283 is not a bar, the Court should then determine whether relief is proper in light of the criteria set forth in *Dombrowski*."

Mr. Justices Black, Harlan, Stewart, and White dissented, 381 U.S., beginning at p. 742 and concluding at p. 759.

Section 3. This act shall take effect and be in force from and after its passage.

Note: The word "unreasonably" in brackets in the text were added by amendment to the Statute on July 9th, 1964.

House Bill 546 became Chapter 343 of the Laws of 1964, later codified as § 2318.5 of the Mississippi Code of 1942, annotated.

[56]. Upon the death of Judge Mize, the present writer was designated to serve in his stead.

In the meantime, the criminal prosecutions here sought to be enjoined were removed from the State Court to the United States District Court for the Southern District of Mississippi. That Court remanded the cases (approximately 48 in number). This was appealed. The United States Court of Appeals for the Fifth Circuit affirmed the remand, sub. nom. *Ben Hartfield, Et Al., v. State of Mississippi*, 363 F.2d 869 (July 21, 1966), the Court being of the opinion that the order should be sustained on the authority of *City of Greenwood v. Peacock*, 384 U.S. 808, 86 S. Ct. 1800, 16 L.Ed.2d 944.

On September 23, 1966, this Court stayed the criminal prosecutions in the State courts until such time as the instant proceedings are finally heard and determined.

In the meantime, on October 15, 1965, we heard further proof and oral arguments on behalf of the parties. Later, the plaintiff and the defendants filed written briefs.

We now come to a consideration of the questions which the Supreme Court directed this Court to answer.

I

Facts

Before giving our views of what the answers should be, we allude briefly to the facts. We do not disturb, of course, the findings of fact already made by the Court as they appear in 244 Fed. Supp. at 847.² Pursuant to the

² In summary, at pp. 848 and 849 of 244 F. Supp., the findings were:

1. There was no evidence that there was a plan or a conspiracy on the part of defendants or in the enactment of the statute to suppress, deter, impede or violate any constitutional right of the plaintiffs to free speech, assembly, to register, to vote, or to demonstrate peacefully and lawfully;
2. The plaintiffs deliberately and intentionally blocked the sidewalk and one of the entrances to the Court-house; and
3. The prosecution for violation of § 2318.5 is in good faith.

hearing of October 15, 1965, we supplementally find the following to have been established by the evidence.

[57] These plaintiffs, after arrest on the courthouse grounds, were charged in the State court substantially in the language of the statute. The blocking of the sidewalks and entrances and interfering with the free use of the courthouse sidewalks and entrances was the gravamen of the offense. We do not sit in this proceeding to determine the guilt or innocence of the plaintiffs but it may be said that we are here to determine whether there is substantial cause in law and fact supporting the right of duly constituted state authorities to have these questions of guilt or innocence determined by appropriate criminal prosecution.

In any event, from all the evidence, including testimony of witnesses on the stand, we find that for many days prior to the arrest and prosecution here in question these complainants and others, carrying banners proclaiming their views, marched around the entire courthouse building. The Sheriff, charged by law with the custody of the courthouse and its grounds, requested the leaders to limit their march to the south half of the front of the courthouse and around the narrow concrete walks at the northwest corner of the building, fronting northerly on North Main Street. For many days, the demonstrators honored this request. Then, a larger group appeared and began marching so close together that they blocked certain vital entrances to the courthouse, particularly the entrance to the Cooperative Extension Service, a function in which the United States participates. At last, on April 10, 1964, the Sheriff read the statute to the participants and warned them that if they violated it he would have no choice but [58] to arrest them. Those participating in the picketing conferred among themselves for most of the night, obtained legal advice, and decided to march on the courthouse grounds the next day. We find that there was no harassment, intimidation, or oppression of these complainants in their efforts to exercise their constitutional rights, but they were arrested and they are being prosecuted in good faith for their deliberate violation of that part of the statute which denounces interference with the orderly use of courthouse facilities by all citizens alike.

This brings us face to face with the validity or invalidity

of Section 2318.5 of the Mississippi Code, and we consider only the questions which the Supreme Court was of the view that we should consider in determining the fate of this litigation.

II

Does 28 U.S.C.A. § 2283³ deny this Court the power to enjoin these criminal prosecutions? We think it does.

At the outset, the Supreme Court directed our attention to note 2, 380 U.S. at 484. This was a note to the opinion of the Court in *Dombrowski v. Pfister*, supra, which will be set out in the margin.⁴

³ Section 2283, 28 U.S.C.

A Court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. June 25, 1948, c. 646, 62 Stat. 968.

⁴ 28 U.S.C. § 2283 (1958 ed.) provides that:

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

The District Court did not suggest that this statute denied power to issue the injunctions sought. This statute and its predecessors do not preclude injunctions against the institution of state court proceedings, but only bar stays of suits already instituted. See *Ex parte Young*, supra. See generally Warren, Federal and State Court Interference, 43 Harv. L. Rev. 345, 366-378 (1930); Note, Federal Power to Enjoin State Court Proceedings, 74 Harv. L. Rev. 726, 728-729 (1961). Since the grand jury was not convened and indictments were not obtained until after the filing of the complaint, which sought interlocutory as well as permanent relief, no state "proceedings" were pending within the intendment of § 2283. To hold otherwise would mean that any threat of prosecution sufficient to justify equitable intervention would also be a "proceeding" for § 2283. Nor are the subsequently obtained indictments "proceedings" against which injunctive relief is precluded by § 2283. The indictments were obtained only because the District Court

Dombrowski sought injunctive and declaratory relief prior to arrest or prosecution, it being alleged that such was threatened to harass the plaintiffs and discourage them and their supporters from asserting and attempting to vindicate the constitutional rights of Negro citizens of Louisiana. Note 2 at p. 484 of 380 U.S. contains the following [59] specific language, "this statute [§ 2283] and its predecessors do not preclude injunctions against the institution of state court proceedings, but only bar stays of suits already instituted." The footnote continued, however, to the effect that it was unnecessary to resolve the question of whether suits under 42 U.S.C. § 1983 (1958 ed.) come under the "expressly authorized" exception to § 2283.

In *Hill v. Martin*, 296 U.S. 393, (1935) the Supreme Court (opinion by Mr. Justice Brandeis) referred to the provisions of this Section, then § 265, as a *prohibition*, saying, at 403:

"The prohibition of § 265 is against a stay of 'proceedings in any court of a State'. That term is comprehensive. It includes all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process. It applies to appellate as well as to original proceedings; and is independent of the doctrine of *res adjudicate*."

Leaving aside any dissertation on "jurisdiction" or "comity," we think the plain language of the statute means what it says and constitutes a positive direction by Congress which this Court should obey. The 1948 Revisors did not change the mandatory language as above expounded by the Supreme Court.

erroneously dismissed the complaint and dissolved the temporary restraining order issued by Judge Wisdom in aid of the jurisdiction of the District Court properly invoked by the complaint. We therefore find it unnecessary to resolve the question whether suits under 42 U.S.C. § 1983 (1958 ed.) come under the "expressly authorized" exception to § 2283. Compare *Cooper v. Hutchinson*, 184 F.2d 119, 124 (C.A. 3d Cir. 1950), with *Smith v. Village of Lansing*, 241 F.2d 856, 859 (C.A. 7th Cir. 1957). See Note, 74 Harv. L. Rev. 726, 738 (1961).

Since this Court rendered its first decision, the Fourth Circuit Court of Appeals has decided *Baines v. City of Danville*, 337 F.2d 579, August 10, 1964.

[60] Section 2283 was there thoroughly analyzed. The authorities were exhaustively examined. It was held that the section is a limitation on the exercise of the equity jurisdiction of District Courts. The Court declined to enjoin prosecutions pending for violation of ordinances of the City of Danville. It was held that 42 U.S.C. § 1983 does not create an exception to the anti-injunction statute.

We, therefore, are of the opinion that § 2283 of Title 28, U.S.C., prohibits this Court from enjoining or abating the criminal prosecutions instituted against the plaintiffs prior to the filing of the suit for injunction.

We are of the further opinion, following the decision in *Baines*, that § 1983, 42 U.S.C., creates no exception to this anti-injunction statute.

The prayer that this Court enjoin or abate the pending prosecutions will be denied.

The matter does not end here, however, for *Baines* held that restraints upon future prosecutions are beyond the reach of § 2283. No doubt this principle is what prompted the second portion of the directions from the Supreme Court, which may here be restated as follows:

Applying the principles of *Dombrowski*, did State conduct in this case justify declaratory or injunctive relief against further enforcement of the statute?

We answer this question in the negative.

We accept as correct the statement of plaintiff's counsel appearing at page seven of his excellent brief that:

[61] "*Dombrowski* sets forth two separate and distinct categories of circumstances in which the exercise of federal equity power to restrain state criminal prosecutions is appropriate. The first * * * relates to situations in which state statutes are challenged on their face as 'overly broad and vague regulations of expression' * * *. [The second] is actually threatened prosecutions under the statute."

The posture of this case necessitates discussion only of the first category.

We therefore deal only with the contentions of plaintiffs that the statute is so broad, vague, indefinite, and lacking in definitely ascertainable standards as to be void on its face.

We think it is as specific and definite as the Florida statute sustained against such an attack in *Harriett Louise Adderley, et al., Petitioners v. State of Florida*, No. 19, October Term, 1966 [35 L.W. 4013], U.S.

S.Ct. , L.Ed2d . That statute denounced "Every trespass upon the property of another, committed with a malicious and mischievous intent * * *." The Florida Court defined a malicious act as one done knowingly and willfully and without any legal justification.

House Bill 546 of the Laws of Mississippi does not prohibit picketing or mass demonstrations on courthouse grounds. The prohibited factor is the obstruction or unreasonable interference with free ingress or egress to and from the courthouse.

[62] In *Adderley*, the Supreme Court expressed the following observations:

"The sheriff, as jail custodian, had power, as the state courts have here held, to direct that this large crowd of people get off the grounds," and

"The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated," and

"The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose."

The record shows that these plaintiffs for about three months had been picketing the courthouse and they had not been arrested because they picketed in space which did not interfere with the normal use of courthouse facilities by all citizens alike, regardless of color or other consideration.

April eleventh, however, was another matter. The Legislature passed a law attempting to prescribe some order to these activities, not really interfering with plaintiffs even on courthouse grounds so long as they did not interfere with others. The record shows that these individuals,

though "frightened" as they claimed, deliberately came to a contest of wills with the sheriff, who had lawful custody of the premises, who had a duty to enforce the statute, and [63] who had a duty to see that they obeyed it. Plaintiffs knew what they were doing, they knew what the statute proscribed, but they went ahead.

Plaintiffs, in their very able and brilliantly written brief, argue that the addition of the word "unreasonably" to the statute made it even more vague and indefinite, but we disagree. The word "unreasonable" seems to have been well understood by the founders of the Republic when they used it in the Fourth Amendment, where it remains, and is enforced, as it should be, to this day.

Plaintiffs also say that the action of City (not County) authorities in permitting the use of the streets for school parades and the like, a practice customarily enjoyed by the community as a part of ordinary community activities, participated in by all races, constitutes selective enforcement of the statute and thus invalidates it. We cannot agree with this argument. We are not here dealing with parades carried on by common consent on the public streets. We here confront picketing on the courthouse grounds in such manner as to interfere with the use of the courthouse by other citizens who had an equal right to its use.

We hold that under all the facts and circumstances of this case the principles announced in *Dombrowski* have not been brought into play, that injunctive or declaratory relief as to future enforcement of the statute is not justified.

By way of epilogue, there are other important reasons, in the exercise of judicial discretion in equity, for declining injunctive or declaratory relief in this case. The plaintiffs allege that they were picketing the courthouse grounds for [64-67] the purpose of obtaining the right to vote and to encourage others to do so. Since this controversy arose, the people of Mississippi, pursuant to Resolutions of the Legislature, in the summer of 1965, went to the polls and overwhelmingly amended the State Constitution to eliminate all literacy tests for voting, except the ability to read and write. By the Voting Rights Act of 1965, Congress eliminated the use of any literacy test in the State of Mississippi during the next five years. Federal Registrars were provided. In *South Carolina v. Katzenbach*, the Supreme Court upheld the validity of this federal legislation.

The right of any Mississippi citizen, of lawful age and not a convict of felony, to vote is now beyond all controversy or unrest. Picketing to obtain the vote or to encourage others to do so is a thing of the past.

This opinion shall constitute our Findings of Fact and Conclusions of Law as provided by Rule 52(a) of the Federal Rules of Civil Procedure, 28 U.S.C.

An Order may be submitted dismissing the Complaint.

[68]

Filed December 24, 1966

Cox, District Judge, Specially Concurring:

This class action involves forty-eight persons who were being prosecuted for the violation of § 2318.5 Mississippi Code 1942, captioned: "Picketing which interferes with ingress and egress to and from public buildings, premises, streets and sidewalks." The body of the act makes it unlawful "for any person, singularly or in concert with others, to engage in picketing or mass demonstrations, in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from any public premise, state property, county or municipal courthouses, city halls, office buildings, jails or other public buildings or property owned by the State of Mississippi, or any county or municipal government located therein, or with the transaction of public business or administration of justice therein or thereon conducted or so as to obstruct or unreasonably interfere with free use of public streets, sidewalks or other public ways adjacent or contiguous thereto, etc." These plaintiffs were charged in the state court in the language of the statute with obstructing the sidewalks adjacent to the county courthouse building of Forrest County, Mississippi and with blocking the entrances to such building by walking along such narrow walks so close together as to violate [69] this statute. The plaintiffs' lawyers say that this statute is vulnerable to the "void for vagueness" doctrine. Significantly, not one of the plaintiffs elected to testify that he could not reasonably understand that his conduct was proscribed by that act. It must be and is conclusively presumed that if such had been the facts that at least one of the plaintiffs would have so testified. This statute is attended by one of the strongest known presumption as to its validity. These plaintiffs well understood that which was proscribed thereby and defiantly persisted in ignoring the request of the sheriff that they desist from walking so close together and that they picket in a lawful fashion. A statute will not be invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language. *United States v. National Dairy Products Corporation*, 372 US 29, 83 S.Ct. 594. In *Jordan v. DeGeorge*, 341 US 223, 71 S.Ct. 703, this vague-

ness doctrine was applied to the words "moral turpitude" involved in the Immigration Act of 1917 [8 U.S.C.A. § 155(a)]. The Court said "impossible standards of specificity are not required. *United States v. Petrillo*, 332 US 1, 67 S.Ct. 1538. The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. *Connally v. General Construction Company*, 269 US 385, 46 S.Ct. 126." That was not a criminal statute but the penalty involved was deportation or banishment from the country and the Court applied such doctrine thereto and approved said enactment. In *Boyce Motor Lines, Inc. v. United States*, 342 US 337, 72 S.Ct. 329, 330, it is said: "A criminal statute must be sufficiently definite to give notice of the required conduct to one who would avoid its penalties, and to guide the judge in its application and the lawyer in defending one charged with its violation. But few words possess the precision of mathematical symbols, most [70] statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently, no more than a reasonable degree of certainty can be demanded. Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line."

In *Samuel Roth v. United States of America*, 354 U.S. 476, 77 S.Ct. 1304, there was involved the question as to the vagueness or not of the Federal Obscenity Statute appearing as 18 U.S.C.A. § 1461. In affirming a conviction, the Court said that many decisions recognize that the terms of obscenity statutes are not precise but said that lack of precision is not itself offensive to the requirements of due process; further saying: "The Constitution does not require impossible standards; all that is required is that the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. *United States v. Petrillo*, supra. These words applied according to the proper standard for judging obscenity, already discussed, give adequate warning of the conduct proscribed and mark boundaries

sufficiently distinct for judges and juries fairly to administer the law. That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense," citing many cases.

There is nothing in this act or in its enforcement in this case which even remotely relates to impinging upon any First Amendment rights of these plaintiffs. Nobody doubted or questioned or denied the right of these plaintiffs to walk or march or demonstrate as they wished with banners containing protestations of their own choice. But this statute simply made picketing unlawful even for such [71] purpose if it blocked the entrances and impeded or prevented the public its right of ingress and egress to such public building. That is all that is involved in this case. Judge Coleman has properly and correctly answered the questions directed by the Supreme Court of the United States to this Court on its remand of this case; and I concur in that opinion in its entirety.

[72] FINDING OF FACTS AND CONCLUSIONS OF LAW,
DECEMBER 24, 1966

Be It Remembered, that pursuant to an opinion and consequent order from the Supreme Court of the United States in this case *vacating* the original judgment of this Court, that this Court duly reconvened and heard and considered testimony and evidence, pro and con, in this case and after receiving briefs of the parties in support of their contentions, the Court now makes its further findings and conclusions by way of supplement to the findings and conclusions herein dated July 10, 1964.

Finding of Facts

The Court renews its former finding of facts, except as herein modified and amended, after hearing oral testimony and receiving other and further evidence in this case.

House Bill 546 now appears as Chapter 343, Mississippi Laws 1964, effective April 8, 1964. This enactment simply proscribed picketing or mass demonstrations which obstructed or interfered with free ingress and egress to and from county courthouses, or so as to obstruct or interfere with free use of public streets, sidewalks, or other public ways adjacent or contiguous thereto.

This Court finds the language of this statute to be so clear and so unambiguous as to constitute sufficient notice to all persons of that action and conduct which is proscribed and made illegal by this act. It complies with every constitutional requirement of the vagueness doctrine set forth [73] in the opinions in this case. All of these plaintiffs had notice and actual knowledge of the fact that this law forbade them to march together in such large numbers and so close together as to make it impossible for business visitors desiring to enter the county courthouse to do so. The plaintiffs deliberately and defiantly and intentionally violated this law on the occasions in suit with the view and for the purpose of testing its constitutional validity under the circumstances.

This picketing actually commenced on January 22, 1964, when some two hundred pickets circled the court house and continued to do so from Monday through Saturday every week. It was taxpaying time when all taxpayers

had to go to the courthouse and pay their license taxes and ad valorem taxes and other important seasonal business which had to be done at the courthouse. The sheriff, as custodian of the courthouse, had worked with the city police in Hattiesburg to contain the pickets and prevent an incident. The courthouse fronted northerly on Main Street in Hattiesburg. The sheriff told the plaintiffs that they could picket as much or as long as they pleased at the northeast corner of the courthouse fronting on North Main and Eaton Street, in the area shown in red on the plat in evidence. But they were requested not to walk in such numbers or so close together as to block entrances to the ground floor of the building. The blue area on the plat is immediately in front of the main steps to the main floor of the building. This plan afforded the plaintiffs a strip of city sidewalk on North Main Street and a strip of sidewalk on Eaton Street for demonstration purposes in the most conspicuous area of the premises. Prior to April 10, 1964, the plaintiffs cooperated with the authorities and did not block any entrances and were not arrested. But on April 10 and again on April 11, 1964 and finally on May 18, 1964, the plaintiffs in a group of thirty-five or forty [74] people appeared in this area and walked around this space forming an almost complete circle in such a manner as to block the entrance to the Forrest County Cooperative Extension Service on the ground floor and the entrance to the county court section of the building, all as shown in yellow on the plat in evidence. An employee, trying to make her way from the County Cooperative Extension Service to the County Agent's office on the main floor of the building by way of the front main steps, had to get in this line as it passed and march with them until they arrived at a point opposite the front steps where she left them. The walks on the inner area were approximately three feet wide as shown on the drawing. The sheriff and county attorney were unable to negotiate passage in the opposite direction along these walks by this circle of humanity without having to step off the walk on to the grass. This is positively not a case where we have as few as ten pickets marching in this area as suggested in the dissent. That sort of condition may have existed at some time prior to the arrest, when the testimony shows that

they sometime had as few as "three, eight, nine or ten pickets," but the incident in suit was provoked by thirty-five to forty people walking as close together as they could on these narrow walks on the courthouse lawn immediately in front of these important entrances. Even prior to the incident in suit, one of the plaintiffs said that it was not unusual to have more than twenty pickets in the line. Their picketing and demonstrating never bothered the officials except when they marched so close together on these narrow walks as to interfere with and obstruct the entrances to this county courthouse. The sheriff and the county attorney tried to reason with the plaintiffs and explained to them that they were blocking these entrances and they were requested to widen the gap between the marchers, but such requests were ignored and violated with impunity. There is no evidence or inference in this record from any testimony that any of these people did [75] not understand this law, or that they were being prosecuted with the view or for the purpose of intimidating or harassing them. On the contrary, this evidence and testimony conclusively shows that these plaintiffs were being prosecuted in good faith for their willful violation of this statute because they were actually obstructing the passageways which afforded ingress and egress to this county courthouse. They were engaged in peaceful picketing prior to April 10, 1964 and were not arrested, but on and after April 10, 1964, these plaintiffs were not engaged in peaceful picketing, but were deliberately and defiantly engaged in conduct which is validly proscribed by Chapter 343, Mississippi Laws 1964.

These plaintiffs are not in this court with clean hands under the circumstances stated. The complaint in its entirety is without merit and should be dismissed.

Conclusions of Law

The Court concludes as a matter of law that it has full jurisdiction of the parties and the subject matter, and has the full power and authority to do all that is herein done.

The Court further concludes as a matter of law that House Bill 546 (appearing as Chapter 343), Mississippi Laws 1964 is valid on its face and is valid as applied and enforced in this case. The Supreme Court of Mississippi

has not passed upon the constitutional validity of that act, but that is not a bar under present decisions to a determination of the validity of such act, by this Court. It is noteworthy that these plaintiffs removed these prosecutions to this Court, alleging invalidity of this act on its face and as applied, and that this Court remanded these cases to the state court. The United States Court of Appeals for the Fifth Circuit in *Ben Hartfield, et al v. State of Mississippi, et al*, (5CA) 363 F.2d 869, affirmed said order of remand.

This Court makes no determination as to the guilt or [76] innocence of the plaintiffs of the charges against them for their action on these occasions, but does hold that there is abundant probable cause for such prosecutions and guilt of the plaintiffs of such charges. Said criminal actions instituted by the defendants against the plaintiffs, were instituted and are maintained in perfect good faith and should not be enjoined or restrained by this Court.

The complaint is thus without merit and should be dismissed with prejudice at plaintiff's cost. An order accordingly will be entered.

Dec. 23, 1966.

Jas. P. Coleman, United States Circuit Judge. Harold Cox, United States District Judge.

Honorable Richard T. Rives, United States Circuit Judge, dissenting.

[77]

Filed December 24, 1966

RIVES, Circuit Judge, Dissenting:

This suit was initially brought on April 13, 1964, and through appropriate amendments became a class action by plaintiffs against the defendants under Rule 23 Fed.R.Civ. P. Plaintiffs sought a declaratory judgment that the Mississippi Anti-Picketing statute was unconstitutional. The Mississippi statute is section 2318.5, Mississippi Code Annotated 1942 (1964 sup.).¹

Plaintiffs also sought injunctive relief restraining the future enforcement of section 2318.5, as well as the abatement of prosecutions already instituted under the Bill. A

¹ Hereafter section 2318.5. The bracketed portions were added by amendment to the statute on July 9, 1964. Section 2318.5 (House Bill No. 546, as amended) reads as follows:

"1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to obstruct or [unreasonably] interfere with free ingress or egress to and from any public premises, State property, county or municipal courthouses, city halls, office buildings, jails, or other public buildings or property owned by the State of Mississippi or any county or municipal government located therein or with the transaction of public business or administration of justice therein or thereon conducted or so as to obstruct or [unreasonably] interfere with free use of public streets, sidewalks or other public ways adjacent or contiguous thereto.

"2. Any person guilty of violating this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars (\$500.00), or imprisoned in jail not more than six (6) months, or both such fine and imprisonment.

"3. This act shall not be construed to affect any suit or prosecution now pending in any court.

"4. This act shall take effect and be in force from and after its passage."

three-judge district court composed of Circuit Judge Rives and District Judges Mize (now deceased) and Cox was convened. The suit was submitted on conflicting affidavits, no live testimony having been taken.

On July 11, 1964 the complaint was dismissed by the court. *Cameron v. Johnson*, 244 F.Supp. 846 (S.D. Miss. 1964). Judge Mize writing for the court held that plaintiffs were not entitled to an injunction even if the statute were unconstitutional, because plaintiffs had "a plain, adequate and complete remedy at law" in the state courts which had not been "exhausted." 244 F.Supp. at 851, 853.

Judge Mize found that it was "not necessary to pass on the constitutionality of this Act [section 2318.5], even though there can be slight doubt as to its constitutionality" and, therefore, held that "it is the duty of the Federal Court to abstain and permit the plaintiffs to pursue their state remedies." 244 F.Supp. at 851, 855-856.

I dissented, stating (244 F.Supp. at 858): "In my opinion, the statute is so clearly unconstitutional that this case is hardly one 'required * * * to be heard and determined [78] by a district court of three judges,' " and concluded that "the statute under attack is clearly unconstitutional, and the plaintiffs are just as clearly entitled to have its enforcement enjoined." 244 F.Supp. at 858.

On appeal the Supreme Court vacated the judgment and remanded the case to the district court, setting two tasks: First, whether under the federal anti-injunction statute an injunction against presently pending criminal cases is barred in this case. Second, whether under the criteria of *Dombrowski v. Pfister*, 380 U.S. 479 (1965), an injunction should issue against present, as well as future, enforcement of the statute. Justices Black, Harlan, White and Stewart dissented. *Cameron v. Johnson*, decided June 7, 1965, 381 U.S. 741.

Subsequent to the district court's opinion, all of the state prosecutions involved in this case were removed under 28 U.S.C.A. § 1443 to the federal courts. Following the opinion of the Supreme Court in *City of Greenwood v. Peacock*, 384 U.S. 808 (1966), these cases were remanded to state courts. *Hartfield, et al. v. Mississippi*, 363 F.2d 869 (5 Cir. 1966). Judge Mize having died, Circuit Judge Coleman was designated as the third member of the three-judge panel.

A full evidentiary hearing was held and the case is now ripe for determination.

I

The threshold question is whether the federal anti-injunction statute, 28 U.S.C.A. § 2283 (1965 ed.),² bars the granting of injunctive relief in a suit brought under the civil rights statute, 42 U.S.C.A. § 1983 (1964 ed.).³ Section 2283 reads as follows:

[79] "A court of the United States may not grant an injunction to stay proceedings in a State court *except as expressly authorized by Act of Congress*, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." (Emphasis added.)

The plaintiffs contend that § 2283 does not proscribe an injunction in the present case, because such relief is "expressly authorized by" § 1983. Section 1983 reads as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, *suit in equity, or other proper proceeding for redress.*" (Emphasis added.)

Since § 1983 authorizes a "suit in equity," the argument is that it also authorizes injunctive relief. The authorities on this problem are in conflict. I would hold that under the circumstances of this case, if the allegations are proved, § 1983 is an express exception to § 2283.

In *Cooper v. Hutchinson*, 184 F.2d 119 (3 Cir. 1950), the Third Circuit held that § 1983 constituted an express authorization for the granting of an injunction against state court proceedings within the meaning of § 2283.⁴ Unfor-

² Hereafter § 2283.

³ Hereafter § 1983.

⁴ Followed in *Tribune Review Publishing Co. v. Thomas*, 153 F. Supp. 486 (W.D. Pa. 1957).

tunately, the Third Circuit merely stated its conclusion without illuminating its rationale.

In *Smith v. Village of Lansing*, 241 F.2d 856 (7 Cir. 1957),⁵ and *Goss v. Illinois*, 312 F.2d 257 (7 Cir. 1963), the Seventh Circuit, without considering *Cooper*, held that section 1983 was not an express exception to section 2283. Neither of these expressions by the Seventh Circuit took time to exhaustively examine the problem or propound a [80] carefully considered rationale.⁶ The Sixth Circuit, also without considering *Cooper* or explaining its reasoning, reached a result consistent with the Seventh Circuit.⁷ *Sexton v. Barry*, 233 F.2d 220 (6 Cir. 1956).

The circuit court first to consider this question at length was the Fourth Circuit, sitting en banc, *Bains v. City of Danville*, 337 F.2d 579 (4 Cir. 1964). In determining that section 1983 was not an express exception to section 2283, the Fourth Circuit reasoned that if section 1983 was read as an express exception to section 2283 there would be little room left in which section 2283 might

⁵ Followed in *Progress Dev. Corp. v. Mitchell*, 182 F. Supp. 618 (N.D. Ill. 1960). See also *Island Steamship, Inc. v. Glennon*, 178 F. Supp. 292 (D. Mass. 1959).

⁶ Judge Mize in *Chaffee v. Johnson*, 229 F. Supp. 445 (S.D. Miss. 1964) adopted the position of the Seventh Circuit. In affirming Judge Mize's disposition of the litigation on its facts, the Fifth Circuit declined to meet the issue raised by section 1983. *Chaffee v. Johnson*, 352 F.2d 514 (5 Cir. 1965) (per curiam).

⁷ In *Moss v. Hornig*, 314 F.2d 89 (2 Cir. 1963), the Second Circuit had before it the issue of whether section 1983 authorized the enjoining of State court criminal proceedings. Judge Lumbard, speaking for the Court, held that it did. That case involved the question of whether Connecticut's alleged selective enforcement of its Sunday closing laws violated the State defendant's equal protection of the laws. After considering the doctrine of comity, the Second Circuit affirmed the trial court's conclusion that the State defendant failed to submit adequate proof to warrant an injunction. Oddly, section 2283 was never considered or mentioned.

have an effective field of operation. The Fourth Circuit explained its holding as follows (337 F.2d 579 at 589):

"Creation of a general equity jurisdiction is in no sense antipathetic to statutory or judicially recognized limitations upon its exercise. Effective removal of a cause of action from a state court to a federal court is incompatible with further proceedings in the state court, but there is no incompatibility between a generally created equity jurisdiction and particularized limitations which restrict a chancellor's power or define the limits of his discretion.

"The anti-junction statute can have effective application only with respect to those matters over which the district courts have a general equity jurisdiction. If there is no jurisdiction to grant an injunction of any kind, there is no room for the operation of a narrow statutory prohibition of injunctions having a specified effect. If every grant of general equity jurisdiction created an exception to the anti-injunction statute, the statute would be meaningless."

In *Dilworth v. Riner*, 343 F.2d 226 (5 Cir. 1965), Judge Bell speaking for the Fifth Circuit recognized the cogency of the *Bains* rationale as a general proposition. *Dilworth* held that section 203(a)-(c) of the 1964 Civil Rights Act, 42 U.S.C.A. § 200a-3(a), was an express exception to section 2283. Section 203 specifically grants the power to issue "a permanent or temporary injunction, restraining order, or other order," where certain rights have been [81] invaded. This specific grant is in stark contrast to the broad general subject matter encompassed in section 1983.

However, to be an express exception a statute need not be as clear a grant as section 203 of the 1964 Civil Rights Act, nor need a statute even mention the term injunction. *Porter v. Dicken*, 328 U.S. 252 (1946); *Amalgamated Clothing Workers v. Richmond*, 348 U.S. 511 (1955); *Dilworth v. Riner*, 343 F.2d 226 (5 Cir. 1965) (dictum); *Beal v. Waltz*, 309 F.2d 721 (5 Cir. 1962). See also *Toucey v. New York Life Insurance Co.*, 314 U.S. 118 (1941); *Jacksonville Blow Pipe Co. v. Reconstruction Finance Corp.*, 244 F.2d 394 (5 Cir. 1957); *T. Smith & Son, Inc. v. Wil-*

liams, 275 F.2d 397 (5 Cir. 1960); *Brown v. Wright*, 137 F.2d 484 (4 Cir. 1943). The principles rationally extrapolated from the cases creating express exceptions to the prohibition of section 2283 derive content from the concrete situations which gave rise to them. Where a specific, limited and clearly delineated substantive right has been conferred by Congress the courts have found an express exception to section 2283. The express exception is the necessary concomitant of the need to vindicate federally created rights and is entirely consistent with the history of section 2283.

Section 2283 and its predecessors date back to 1793 when Congress enacted an unqualified prohibition on injunctions: " * * * nor shall a writ of injunction be granted [by any federal court] to stay proceedings in any court of a state * * * " ^s Section 5 of the Act of March 2, 1793, 1 Stat. 335. The scope of this original statute and its successors has been restricted by judicial construction; interestingly, whenever Congress has acted it has always acted to further restrict the scope of the anti-injunction [82] statute. As the Third Circuit said in *In re Standard Gas & Electric Co.*, 139 F.2d 149 (3 Cir. 1943) at 152, "The purpose of its [2283's] prohibition was to prevent federal courts, when exercising jurisdiction coordinate with state courts, from drawing to themselves the right to determine adverse claims."

Section 2283 is aimed primarily at allowing state courts to proceed to the determination of issues involving state law which might be drawn to the federal courts. The allegations in the instant case show that this Court is asked to vindicate primarily federal rights protected by a specific federal statute. The charge is that section

^s The history of section 2283 is discussed at length by the Supreme Court in *Toucey v. New York Life Insurance Co.*, 314 U.S. 118 (1941). See also *Amalgamated Clothing Workers of America v. Richmond Brothers*, 348 U.S. 511 (1955); *Jacksonville Blow Pipe Co. v. Reconstruction Finance Corp.*, 244 F.2d 394 (5 Cir. 1957); *T. Smith & Son, Inc. v. Williams*, 275 F.2d 397 (5 Cir. 1960).

2318.5 as applied here is a subterfuge for denying plaintiffs their federally protected rights as they relate to voting.

The activity engaged in by plaintiffs today has specific federal protection. 42 U.S.C.A. § 1973i(b) states:⁹

“(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 1973a(a), 1973d, 1973f, 1973g, 1973h, or 1973j(e) of this title.”

The allegation is that the purpose of section 2318.5 and these arrests and prosecutions under that section is to harass and punish the plaintiffs for their participation in the civil rights movement and to deter them, and others similarly situated, from exercising rights of free speech and assembly guaranteed by the Federal Constitution and the right to urge or aid others to attempt to register and vote guaranteed by federal statute. If this allegation is

⁹ A similar prohibition is found in 42 U.S.C.A. § 1971(b). *United States v. Bruce*, 353 F.2d 474 (5 Cir. 1965). Unlike 42 U.S.C.A. § 1971(b), section 1973i(b) does not require that the prohibited acts be racially motivated; nor does section 1973i(b) require proof of a “purpose” to interfere as does section 1971(b). “[N]o subjective purpose or intent need be shown.” House Rep. No. 439 to accompany H.R. 6400, June 1, 1965. 10 U.S. Code Cong. & Adm. News 2532. While section 1973i(b) had not been enacted when this suit was first instituted, this is an equity suit and the law must be applied as it now stands. If further prosecution under section 2318.5 would be inconsistent with section 1973i(b), it must be abated. Section 1971(b) which prohibits the same behavior was enacted before section 2318.5. If the allegations alleged here are true, further prosecution under section 2318.5 would be inconsistent with section 1971(b). *United States v. Bruce*, *supra*.

true, plaintiffs are not asking the federal courts to enjoin the proper application of state law in state courts, but are merely asking that federal rights be vindicated in federal courts which are primarily responsible for protecting those rights.¹⁰ Under these circumstances, section 1983 is and should be an express exception to section 2283. *Cox v. Louisiana (II)*, 348 F.2d 750 (5 Cir. 1965).¹¹

In the second *Cox* case, the question was whether, under conditions parallel to those alleged here, the litigation could be removed from a state to a federal court. Judge Wisdom, speaking for the Court, addressed himself to the question of whether an injunction against the prosecution could issue. He stated (348 F.2d 750 at 752):

"A civil complaint asserting such an abuse of the prosecutorial function would state a claim under the Civil Rights Act, 42 U.S.C. § 1983 and justify injunctive relief. *Dombrowski v. Pfister*, 1965, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22. This is not a *Douglas v. City of Jeannette*, *Stefanelli*, or *Cleary v. Bolger* situation. Here the State, through the Parish District Attorney, under the guise of protecting the administration of justice, is challenging the Nation on a national policy expressed in the Constitution, carried out by Congress, and validated by the Supreme Court.

"The general principle, basic to American Federalism, that United States courts usually should refrain from interfering with state courts' enforcing local laws is unassailable. But the sharp edge of the Supremacy Clause cuts across all such generalizations.

¹⁰ *McNeese v. Board of Education*, 373 U.S. 668 (1963) at 671.

¹¹ To avoid confusion, the first case, *Cox v. Louisiana*, 379 U.S. 559 (1965), in which the Supreme Court reversed a conviction litigated through the State courts, will be referred to as *Cox (I)*. The second case, *Cox v. Louisiana*, 348 F.2d 750 (5 Cir. 1965), in which the Fifth Circuit held that attempts to prosecute Reverend Cox subsequent to *Cox (I)* could be removed to federal court, will be referred to as *Cox (II)*.

When a State, under the pretext of preserving law and order uses local laws, valid on their face to harass and punish citizens for the exercise of their constitutional rights or federally protected statutory rights, the general principle must yield to the exception: the federal system is imperiled."

Accord, Hillegas v. Sams, 349 F.2d 859 (5 Cir. 1965) (separate opinion of Judge Brown). In *McNeese v. Board of Education*, 373 U.S. 668 (1963) at 671, 672, the Supreme Court said:

"That is the statute [1983] that was involved in *Monroe v. Pape*, supra [365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492]; and we reviewed its history at length in that case. 365 U.S. at 171, et seq. [81 S.Ct., at 475, et seq.]. The purposes were severalfold—to override certain kinds of state laws, to provide a remedy where state law was inadequate, 'to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice' (id., 174 [81 S.Ct. 477]), and to provide a remedy in the federal courts supplementary to any remedy any State might have. Id., 180-183 [81 S.Ct. 480-482].

"We would defeat those purposes if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court. The First Congress created federal courts as the chief—though not always the exclusive—tribunals for enforcement of federal rights. * * *"

[84] The great danger in federal intervention in state criminal litigation is that it will cause that litigation to be conducted piecemeal. Thus, federal courts have declined to intervene to suppress alleged illegally seized evidence. The defendant must await federal review through certiorari or by habeas corpus. In the instant case, if the plaintiffs succeed, then the litigation, present and future, will be brought to an end. As Judge Wisdom said in the *Cox (II)* case, 348 F.2d 750-755: "[T]here is no federal invasion of states' rights. Instead, there is rightful interposition under the Supremacy Clause of the Constitution to protect the

individual citizen against state invasion of federal rights.”¹² In *City of Greenwood v. Peacock*, 384 U.S. 808 (1966), the Supreme Court held that prosecutions such as those here involved are not removable under 28 U.S.C.A. § 1443. In so holding, the Supreme Court recognized that under “extraordinary circumstances,” where the state prosecutions are themselves used to intimidate persons in the exercise of their constitutional and federal statutory rights, federal injunctions are available to protect these precious rights. *City of Greenwood v. Peacock*, 384 U.S. 808 (1966), at 829.

While the *Bains* case may be correct as a general principle, its reasoning cannot be logically applied to cases involving specific rights clearly and specifically protected under a federal statute. If the allegations made here are true, the officials of the State of Mississippi by bringing or further continuing the prosecutions here involved have committed a federal crime. Would it not be absurd to say that the public officials here involved may be fined \$5,000 and imprisoned for 5 years by a federal court,¹³ yet that same federal court may not enjoin their

¹² In *McNeese v. Board of Education*, 373 U.S. 668 (1963) at 674, n. 6, the Supreme Court said:

“As well stated by Judge Murrah in *Stapleton v. Mitchell*, 60 F. Supp. 51, 55, appeal dismissed pursuant to stipulation, 326 U.S. 690: ‘We yet like to believe that wherever the Federal courts sit, human rights under the Federal Constitution are always a proper subject for adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum.’”

¹³ 42 U.S.C.A. § 1973j(a) and (c); cf. *United States v. Guest*, 383 U.S. 745 (1966). (The provisions of 18 U.S.C.A. § 241 impose punishments of up to 10 years in prison for those who conspire to deprive any citizen of the “free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States” by causing the arrest of Negroes by means of false reports that such Negroes had committed criminal acts.”

commission of that crime and thus prevent their effecting [84a] the very injury the statute is designed to prevent?

Moreover, section 2283 is not a jurisdictional statute, and in spite of its absolute language does not prevent a federal court from issuing an injunction against a state court proceeding where conditions warrant such relief. Section 2283 is a statutory adoption of the doctrine of comity. Judge Wisdom, writing for the Fifth Circuit in *Southern California Petroleum Corp. v. Harper*, 273 F.2d 715 (5 Cir. 1960) at 718-19, said:

"Section 2283 is essentially a rule of comity, and the demand here that a federal court interfere with state court proceedings is directed to the discretion of the federal court. This discretion should be exercised in the light of the historical reluctance of federal courts to interfere with state judicial proceedings"¹⁴

The Fourth Circuit in *Baines v. City of Danville*, *supra*, 337 F.2d at 593, clearly recognized this distinction when it said:

"Since the statute was fathered by the principles of comity, it has been held that the statute should be read in the light of those principles and, though absolute in its terms, is inapplicable in extraordinary cases in which an injunction against state court proceedings is the only means of avoiding grave and irreparable injury. In our view, the congressional command ought to be ignored only in the face of the most compelling reasons, but we have certainly been told by the Supreme Court that in those circumstances it may be disregarded, for its parentage discloses that it was not intended to be as absolute as it sounds."

¹⁴ Section 2823 is sometimes referred to as denying "jurisdiction to a federal court to enjoin proceedings in a State court except in unusual circumstances." *Williams v. Puerifoy*, 316 F.2d 774 (5 Cir. 1963) (per curiam) at 775. The doctrine is clearly one of comity and the principles of comity determine when "unusual circumstances" exist.

Accord: Hulett v. Julian, 250 F. Supp. 208 (M.D. Ala. 1966) (three-judge district court); *Zellner v. Lingo*, 218 F. Supp. 513 (M.D. Ala. 1963), *aff'd*, 334 F.2d 620 (5 Cir. 1964); *Feldman v. Pennroad Corp.*, 60 F. Supp. 716 (D. Del. 1945), *aff'd*, 155 F.2d 733 (3 Cir. 1946), *cert. den.*, 329 U.S. 808 (1947). See also cases collected *Baines v. City of Danville*, 337 F.2d 579 (4 Cir. 1964) at 591, n. 10.

The fact that section 2283 is only a comity statute and does not prevent the issuance of an injunction was recognized by Judge Mize in this case. *Cameron v. Johnson*, 244 F. Supp. 846 (S.D. Miss. 1964 at 851. Therefore, we [85] turn to the only real issue in this case, do the facts as proved require the granting of the relief requested?

II

The demonstrations which resulted in the arrests under section 2318.5 had their origin during January of 1964. For several days prior to January 22 the Council of Federated Organizations¹⁵ and others¹⁶ distributed leaflets. These leaflets declared that January 22 would be "freedom day." A rally was to be held which included picketing the Forrest County Court House¹⁷ in a protest against discrimination in voter registration.¹⁸

On January 22 several hundred persons, Negroes and whites, appeared at the Court House, as did reporters from the local and national press. The County sheriff designated a "march route" which the demonstrators followed in picketing the Court House.¹⁹

Subsequent to January 22 the picketing of the Court House continued. The area designated by the Sheriff "consisted of three sides, the east, north and west side

¹⁵ Hereafter COFO.

¹⁶ Reverend Cameron was director of the Hattiesburg Ministers' Project for the National Council of Churches of Christ.

¹⁷ Hereafter Court House.

¹⁸ Trial record (hereafter Tr.) 271, 220, 230.

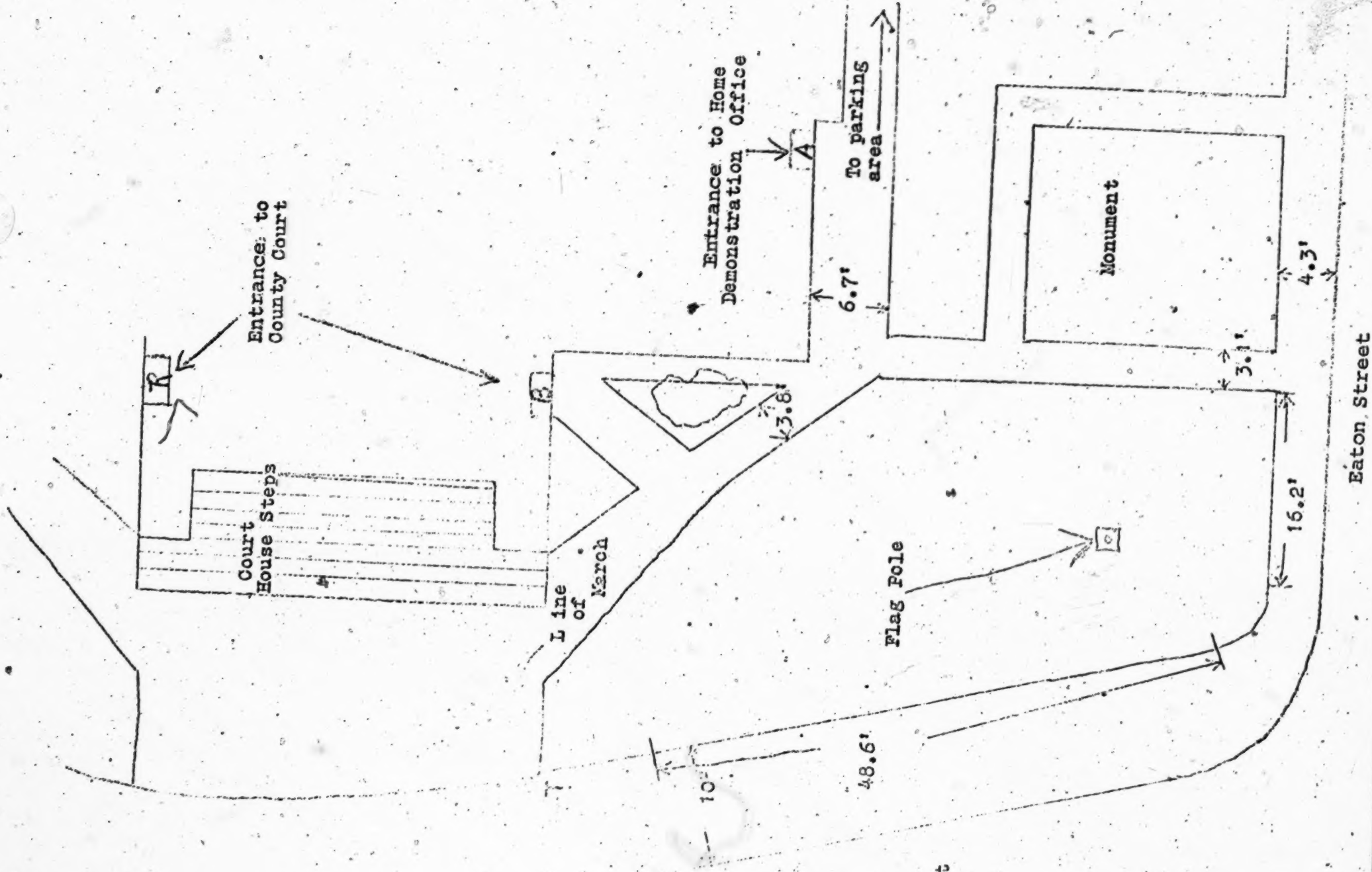
¹⁹ Tr. 220-21, 230, 271.

of the court house." The demonstrators during this early period sang, chanted, prayed and preached.²⁰

To facilitate access to the Court House, the Sheriff blocked off a small area to the right of the main entrance to the Court House where the picketers were allowed to continue their activities. The axis of this area of march was an irregularly shaped grassy plot with a flag pole on it.²¹ It is difficult to verbalize the scene, so a scale drawing is reproduced here for convenience:

²⁰ Tr. 221, 230-31, 271-72.

²¹ Tr. 77, 178, 222, 231, 272.



[87] Picketing continued into April of 1964. All agree that from April 1 until April 11 pickets were present every day except Sundays. From April until April 9 the number varied from 7 to 20.²²

Unlike the earlier mass picketing where hundreds were present, the picketing in April was entirely orderly and quiet. The pickets did not sing, chant, pray or preach. "The only noise" they "made was an occasional comment to one another in normal conversation." They in no way made any noise that would disturb the transaction of business within the Court House.²³

The pickets marched steadily but slowly. They made it a point to be courteous to persons desiring to pass them and never blocked anyone from passing them.²⁴ This was the situation that persisted until April 9.

On April 9 a small group was picketing the Court House. As was their usual practice, they started "to disband the picket" line around four o'clock. Several police officers arrived and "began to break down the wooden barriers" which had previously delineated their line of march. Sheriff Gray accompanied by Mr. Dukes, the County Prosecuting Attorney, and Deputy Morgan approached the group asking for their attention. A copy of section 2318.5, which had just been passed by the Mississippi legislature and had just been received in Hattiesburg, was read to them. The Sheriff then gave them five minutes in which to disperse, which they did.²⁵

On the morning of April 10, they assembled shortly after 9 A.M. at the COFO headquarters. They lined up approximately 10 feet apart and walked to the Court House.²⁶

[88] The pickets arrived at the corner across from the Court House at about 10 A.M. where they found a normal flow of traffic. They "waited to cross the street until the policeman had halted traffic as he did for all pedestrians."

²² Tr. 85, 72, 122, 224, 235, 273. Connor testified that at times it reached as many as 38 or 39. Tr. 232.

²³ Tr. 39-40, 107.

²⁴ Tr. 126.

²⁵ Tr. 34, 77, 109-110, 273-77.

²⁶ Tr. 83-84.

They "crossed with other pedestrians and then began to march in the area previously designated for picketing in a very orderly fashion." Because of the previous warning they were "more frightened" than before and "for that reason" they "were more orderly and quiet" than previously.²⁷

This was the largest number of pickets that had participated in the marching that week. They numbered about 40.²⁸ After a short time, Sheriff Gray stopped the pickets. The testimony here is in dispute. The defendants' witnesses testified that Sheriff Gray warned the pickets that they were violating section 2318.5, and when they failed to disperse he placed them under arrest.²⁹ Plaintiffs' witnesses testified that they were placed under arrest without warning or that, in any event, if there was a warning they did not hear it.³⁰

This large group was then placed in jail for obstructing free ingress to or egress from the Court House.³¹ At the time of the arrest the area immediately adjacent to the picketing area was congested with spectators. There were 20 or 25 people standing on the main steps of the Court House and a "tight knot of people" were "blocking the sidewalk." None of these persons were arrested or asked to move on. Since they were neither "picketing" nor engaging in "mass demonstrations," they were not subject to section 2318.5.³²

On the afternoon of April 10, Mary Williams and nine other persons were arrested for violating section 2318.5

²⁷ Tr. 37, 111-12, 147, 171, 279.

²⁸ Estimates of how many picketers participated in the April 10 morning demonstration ranged from 28 to 43. Tr. 36, 51, 90, 182, 201, 279, 320, 334. At no time were they warned that a large group could not picket the Court House. Tr. 50.

²⁹ Tr. 276-77, 282, 335. Reverend Brown also thought that Sheriff Gray might have given them one minute to disperse before arresting them. Tr. 56.

³⁰ Tr. 39, 113-14, 143-45, 172, 226.

³¹ No one made any attempt to lie down or resist arrest. Tr. 39.

³² Tr. 37-38, 78-80, 83, 111, 129, 130-31, 136.

[89] by peacefully and quietly picketing the area around the flag pole. On April 11 nine more pickets were arrested. Between April 11 and May 17 spasmodic picketing continued without incident. On May 18 a group of nine demonstrators began picketing in the area around the flag pole. They were ordered to cease obstructing ingress to and egress from the Court House. Two of the pickets then left and the other seven were arrested.³³ After May 18 picketing was not resumed.³⁴

The defendants contend that section 2318.5 is constitutional on its face and that it was properly applied so as to protect the normal transaction of business in the Court House. The plaintiffs contend that section 2318.5 is unconstitutional on its face and was clearly unconstitutionally applied.

I would conclude that an inspection of the record in this case clearly shows that section 2318.5 was unconstitutionally applied. Moreover, the application of the statute in this case illustrates how vague the statute really is and compels the conclusion that it is unconstitutional on its face.

The main thrust of the defendants' argument is that the pickets obstructed the entrance to the County Court Room, designated as "B" on the drawing, and the entrance to the Home Demonstration Office, designated as "A" on the drawing. I will treat the Home Demonstration Office first.

The Home Demonstration Office is a small office with only one entrance. It has no inside entrance to the interior of the Court House. Mrs. Pearl Burkett is the Home Demonstration Agent. She leaves her office and goes to

³³ Tr. 153, 154-55, 158-159, 199, 227, 301, 305. See affidavit of Sheriff Gray, p. 1. There appears to be some confusion between the arrests made on May 18 and those made on April 11. Sheriff Gray's affidavit shows 7 persons were arrested on May 18 after 2 persons left rather than be arrested. Mr. Wells indicated that similar events transpired on April 11 leading to the arrest of 7 persons. Tr. 199.

³⁴ Tr. 204-05, 211. See also Tr. 192.

County Agent's office about four or five times each day.³⁵ To get there, she leaves her office and proceeds along the [90] walk to the main steps of the Court House and proceeds up those steps to the second floor. The sidewalk at one point narrows to as little as 3.8 feet.

On the morning of April 10 during the picketing, Mrs. Burkett found it necessary to go to the County Agent's Office. She testified (Tr. 317): "I started the regular route and they were so close together that I had to wait for just a moment to get in line and I fell in line with them and started weaving back and forth until I reached the front steps and then dropped out of the line." Her testimony is, of course, the only real testimony of obstruction contained anywhere in the record.³⁶ While the walkway is wide enough at most points for her to walk past the pickets, for about six feet it is only 3.8 feet wide. To be comfortable one would most likely have to walk single file in line, one person behind another, at that point. Thus, she had to weave back and forth by falling "in line with them" for a few steps. They were not discourteous; she was not bumped or molested; they were peaceful and orderly.³⁷ Whatever "obstruct" may mean, here, clearly Mrs. Burkett was not blocked or prevented from making her sojourn to the County Agent's Office. Nor is there a single shred of evidence that the pickets were unwilling to let persons pass at anytime before or during the demonstration.

In the past the pickets had seen persons come out of the main steps to the Court House and pass them and the Home Demonstration Office on their way to the parking area behind the Court House.³⁸ The pickets were never told that they blocked the Home Demonstration Office door. One witness recalled Mrs. Burkett passing them on the way into her office on several mornings. She would

³⁵ Tr. 315.

³⁶ At the time of the arrests no one in the vicinity sought to enter the Court House and no one was actually obstructed from entering it on business. Tr. 39. See also Tr. 107.

³⁷ Exactly how far apart the pickets were is not clear. One witness thought it was 3 to 4 feet. Tr. 125. Another testified it was 6 to 10 feet. Tr. 84, 91.

³⁸ Tr. 32-33, 74.

[91] greet them "cordially."³⁹ Another picket recalled at least three persons "who had easy access to that door ['A'] who walked by me on the way to business in that particular office."⁴⁰ These earlier instances are of continuing importance since Mr. Dukes testified that had the law been in effect, the earlier picketing would have violated it.⁴¹

The problem of blocking the entrance to the County Court Room is even clearer. Reverend Brown, like the other witnesses for the plaintiffs, testified that the entrance to the County Court Room was never blocked.⁴² The defense presents an appealing picture as to the blocking of entrance "B". Mr. Selby Bowling, President of the Forrest County Board of Supervisors, was attracted by "curiosity as much as anything else" to the steps of the Court House on the morning of April 10th, where he watched the arrest of the demonstrators who he described as a "nuisance."⁴³ The reason entrance "B" must be kept open is, according to Mr. Bowling, that "there are a lot of elderly people who use that and catch the elevator to go to the second floor." This use of the ground floor elevator, in his "opinion," was prevented by the pickets.⁴⁴ Of course, the Court House is symmetrical and there is an entrance to the County Court Room, identical to the one marked "B", on the opposite side of the Court House steps, which entrance is marked "R" in the drawing, p. 11, *supra*. This entrance was in no way affected by the picketing: Surely we cannot silence a peaceful group in the orderly exercise of their freedom of speech just because they pass in front of one of several entrances to a court house.⁴⁵ Here, entrance "R" was available, or the main

³⁹ Tr. 74.

⁴⁰ Tr. 108, 123.

⁴¹ Tr. 292-93.

⁴² Tr. 19-20, 30, 32, 126-127; see in addition, Tr. 74, 107-08, 123.

⁴³ Tr. 327.

⁴⁴ Tr. 330, 331.

⁴⁵ As Reverend Brown put it, "we couldn't possibly be blocking because of all the entrances to this building." Tr. 43.

entrance, or even the back entrance from the parking lot. [92] The only evidence in this record of this blockage of entrance is the testimony of Mr. Dukes, who testified that, prior to the arrests on the morning of April 10, he tested the obstruction by attempting to walk against the current of the line of pickets. He said he could not.⁴⁶ I do not find this testimony sufficient to overcome the weight of all the other testimony contained in this record.

The danger occasioned by section 2318.5 is made even more evident when we examine the further arrests made on the afternoon of April 10, on April 11, and on May 18, not one of which groups exceeded 10 persons.⁴⁷ These pickets were arrested because they walked so closely together that no one could pass between them, thus they obstructed ingress to and egress from the Court House.⁴⁸

Picture 10 persons walking very closely together, which would occupy a space of about 16 to 20 feet. Now picture this group at the point where I have marked "T" on the drawing, just above and to the left of the flag pole. If they were there, the entire remainder of their route would be left open both in front and in back. Can these people logically be arrested for obstructing points "B" and "A" when the majority of their time in walking about the flag pole will leave the walkways totally unobstructed? I think not.⁴⁹

To illustrate, take the group arrested on the afternoon of April 10. Mrs. Mary Williams went to the Court House with a group of nine other persons, ranging in age up to 18 or 21. The 10 of them then proceeded to picket around the flag pole. Mrs. Williams testified (Tr. 157):

"Q. Did anybody try to go in or out of the court house while you all were there?

⁴⁶ Tr. 281.

⁴⁷ See n. 34, *supra*, and accompanying text.

⁴⁸ Tr. 284-85; see affidavit of Sheriff Gray.

⁴⁹ The distance from point "T" to the corner is well over 48 feet, and the distance from the corner to where the pickets would again enter the walkway is over 16 feet. The idea that while walking this 60 some odd feet these 10 pickets blocked entrances "A" and "B" is totally absurd.

"A. No, they didn't, wasn't no one there to enter the court house, we were just on the line picketing." ⁵⁰

[93] They were arrested for obstructing ingress to and egress from the Court House under section 2318.5.

With these facts in mind, I think the law on this subject clearly compels the conclusion that section 2318.5 and its application in this case are unconstitutional. This case is strikingly similar to *Cox v. Louisiana (I)*, 379 U.S. 536 (1965), where the Supreme Court was called upon to consider the constitutionality of a statute forbidding the obstructing of public passages. ⁵¹ There was no doubt in *Cox (I)* that the sidewalk across from the Court House "was obstructed, and thus, as so construed, appellant violated the statute." 379 U.S. at 553. The Court rejected the idea "that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech." 379 U.S. at 555. Nonetheless, the statute in question was held invalid.

The operative fact that made the statute unconstitutional was the overly-broad reach that allowed city officials to choose which demonstrations would be permitted. 379 U.S. at 557. Cf. *Ashton v. Kentucky*, 384 U.S. 195 (1966),

⁵⁰ See also Tr. 156.

⁵¹ "Obstructing Public Passages

"No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge; alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, watercraft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

"Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions." La.Rev.Stat. § 14:100.1 (Cum. Supp. 1962).

and cases there cited. In the instant case, the same condition prevails. A single picket could be viewed as obstructing ingress and egress because for an instant he blocked entrance "A" or "B" to the Court House. Such an application of section 2318.5 is no more unlikely than that 10 persons would be so charged when they could only block free and unfettered access to "A" or "B" for an instant and leave it unblocked for substantial periods.⁵² These arrests were made at a time when not a single person desired access to entrances "A" or "B". What the [94] Supreme Court said in *Cox (I)*, I think, is equally applicable here (379 U.S. at 557-58):

"It is, of course, undisputed that appropriate, official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups either by use of a statute providing a system of broad discretionary licensing power or, as in this case, the equivalent of such a system by selective enforcement of an extremely broad prohibitory statute."⁵³

This situation must be distinguished from the precisely drawn, narrow statutes that have been consistently and

⁵² Note that section 2318.5 states: "It shall be unlawful for any person, *singly* or in concert with others * * *." (Emphasis added.)

⁵³ In the instant case, plaintiffs attempt to make an argument based on Hattiesburg's parade ordinance. That ordinance was not placed in evidence and we cannot therefore judge what that ordinance does or does not say. Unlike State statutes, judicial notice cannot be taken of municipal ordinances. § 3374-77 (Miss. Code 1942). *Bohannon v. City of Louisville*, 144 So. 44 (Miss. 1932). See 5 Moore's Fed. Prac. ¶ 43.09, n. 13. There is a distinction between parades, such as homecoming celebration parades by colleges, and picketing and demonstrating. What is an appropriate regulation for picketing and demonstrations may not be an appropriate regulation for parades. See generally, *Smith v. City of Montgomery*, 251 F. Supp. 849 (M.D. Ala. 1966).

carefully applied. About such statutes the Supreme Court in *Cox (I)* said:

"It is, of course, undisputed that appropriate, limited discretion, under properly drawn statutes or ordinances, concerning the time, place, duration, or manner of use of the streets for public assemblies may be vested in administrative officials, provided that such limited discretion is 'exercised with "uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination"' . . . [and with] a "systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways . . ."' *Cox v. New Hampshire, supra* [312 U.S. 569], at 576. See *Poulos v. New Hampshire, supra* [345 U.S. 395]." (Emphasis added.) 379 U.S. at 558.

Perhaps the Constitution allows broader power to be vested in public officials where they have showed themselves to be "consistent and just," with a "uniformity of method," "free from improper" "considerations," or "unfair discrimination," but the record in the present case clearly will not support such a grant. If we are not blinded by the one large group of pickets arrested, but take the entire record, we must see to what great abuse this broad grant of power is subject. This is a case of selective enforcement. While not all pickets were arrested on each occasion, the arrests were frequent enough to have the desired effect. By May 18 this "nuisance" was eliminated. If there is anything "consistent" or if any "uniformity" appears in this record, it is that section 2318.5 was consistently used to harass the civil rights' movement in Hattiesburg.

[95] Contrary to Judge Coleman's opinion, I think that the Florida statute sustained in the five-to-four decision in *Adderley, et al. v. Florida*, U.S. No. 19, Oct. Term 1966, decided November 14, 1966, was not so vague as the statute here involved. That is so because here the statute requires no specific intent, while in *Adderley* the trespass must have been "with a malicious and mischievous intent." "Malicious" and "mischievous" were fully defined by the trial court, and Mr. Justice Black wrote for the ma-

majority that the use of those terms made the meaning of the statute "more understandable and clear":

"Petitioners seem to argue that the Florida trespass law is void for vagueness because it requires a trespass to be 'with malicious and mischievous intent. . . .' But these words do not broaden the scope of trespass so as to make it cover a multitude of types of conduct as does the common-law breach-of-the-peace charge. On the contrary, these words narrow the scope of the offense. The trial court charged the jury as to their meaning and petitioners have not argued that this definition, set out below,² is not a reasonable and clear definition of the terms. The use of these terms in the statute, instead of contributing to uncertainty and misunderstanding, actually makes its meaning more understandable and clear.

² "Malicious" means wrongful, you remember back in the original charge, the State has to prove beyond a reasonable doubt there was a malicious and mischievous intent. The word "malicious" means that the wrongful act shall be done voluntarily, unlawfully, and without excuse of justification. The word "malicious" that is used in these affidavits does not necessarily allege nor require the State to prove that the defendant had actual malice in his mind at the time of the alleged trespass. Another way of stating the definition of "malicious" is by "malicious" is meant the act done knowingly and willfully and without any legal justification.

"Mischievous," which is also required, means that the alleged trespass shall be inclined to cause petty and trivial trouble, annoyance and vexation to others in order for you to find that the alleged trespass was committed with mischievous intent.' R. 74." (U.S. No. 19, Oct. Term 1966, pp. 3 & 4.)

[96] *Adderley* is distinguishable also from the present case because in *Adderley* the demonstrators went to the jail, while in this case they went to the Court House. Indeed, I think that *Adderley* supports the view which I take, because it recognizes the validity of *Edwards v. South Carolina*, 372 U.S. 229 (1963), and *Cox v. Louisiana*, 379 U.S.

536, 559 (1965), and the facts of this case bring it within the rule announced in *Edwards* and followed in *Cox (I)*, rather than in the rule announced in *Adderley*.

This case is an even stronger case than *Cox (I)*. Here there was no danger of disorder. No one preached the value of law-breaking or sit-ins. What was continuously stressed was that the pickets be courteous and block no one, that they be quiet and not disturb the normal functioning of the County Court. The line must be drawn between those demonstrators who wrongly believe that social justice can be attained at the expense of other peoples' liberty,⁵⁴ and those who peacefully and politely, without injury to others, gather to picket on behalf of their cause. This record proves that this is not a borderline case, but falls well within the limits of peaceful picketing.⁵⁵

⁵⁴ See *Forman v. City of Montgomery*, 245 F. Supp. 17 (M.D. Ala. 1965), *aff'd*, 355 F.2d 930 (5 Cir. 1966), *cert. den.*, U.S. (1966); *Johnson v. City of Montgomery*, 245 F. Supp. 25 (M.D. Ala. 1965).

⁵⁵ In *Cox (I)* the Court said (379 U.S. at 554-55):

"From these decisions certain clear principles emerge. The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection. One would not be justified in ignoring the familiar red light because this was thought to be a means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their

Section 2318.5 should also be clearly distinguished from the federal statute relating to "picketing or parading" "in or near" a federal Court House.⁵⁶ The federal statute, like that involved in *Adderley v. Florida*, *supra*, contains a subjective intent provision not found in the Mississippi law. Thus, under the federal provision, one must not only perform the physical act of picketing or parading, or using a sound-truck to create a disturbance, but, in addition, have the specific intent to interfere with "the administration of justice."

These demonstrators quietly parading outside the Forrest County Court House could not have violated a statute patterned on the federal statute since there was no intention "of interfering with, obstructing, or impeding the [97] administration of justice."⁵⁷ And there is no evidence that they did interfere with such administration.

streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations."

⁵⁶ The federal statute, 18 U.S.C.A. § 1507, reads as follows:

"§ 1507. *Picketing or parading.*

"Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

"Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

⁵⁷ When the picketers arrived at the Court House on the morning of April 10, they were "apprehensive" because of the "threatened" arrest the day before, but they "came

The federal Act applies to obstructing justice, not obstructing "free ingress or egress to and from any public premises." The use of a loud sound-truck across the street from a federal courthouse could violate the federal statute, but *that alone* could not violate the Mississippi statute. The statutes are aimed at two distinct types of behavior. Most important, the federal statute with its specific intent provision restricted to certain types of improper influence is far more narrow than section 2318.5. For these reasons, I do not believe that the defendants can sustain section 2318.5 by comparing it to the federal picketing statute.

In *Shuttlesworth v. Birmingham*, 382 U.S. 87 (1965), the question of when an ordinance is overly broad was again before the Supreme Court. The Court there said (382 U.S. at 90-91):

"On its face, the here relevant paragraph of §1142 sets out two separate and disjunctive offenses. The paragraph makes it an offense to 'so stand, loiter or walk upon any street or sidewalk . . . as to obstruct free passage over, on or along said street or sidewalk.' The paragraph makes it 'also . . . unlawful for any person to stand or loiter upon any street or sidewalk . . . after having been requested by any police officer to move on.' (Emphasis added.) The first count of the complaint in this case, tracking the ordinance, charged these two separate offenses in the alternative.

"Literally read, therefore, the second part of this ordinance says that a person can stand on a public sidewalk in Birmingham only at the whim of any police officer of that city. The constitutional vice of so broad

with the feeling that they were not disobeying this law [section 2318.5]." Tr. 37. They knew if they "blocked" free ingress to the Court House they would violate section 2318.5, but they did not see how they could "possibly be blocking because of all the entrances to this building." Tr. 43, 46. Reverend Vaux when asked if he specifically intended to violate the law by returning to picket on April 10, after being advised of its content and after the clergy had discussed it among themselves, said: "I would want to say we did not discuss the validity of the law. We discussed our right, constitutional right, to picket." Tr. 89.

a provision needs no demonstration. It 'does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat.' *Cox v. Louisiana*, 379 U.S. 536, 579 (separate opinion of Mr. Justice Black). Instinct with its ever-present potential for arbitrarily suppressing First Amendment liberties; that kind of law bears the hallmark of a police state."

Cf. *Ashton v. Kentucky*, 384 U.S. 195 (1966). The same may be said of the statute here involved. As demonstrated by the arrests made by police officers between April 10 and May 18 "a person can * * * [picket the County Court House] only at the whim of any police officer of that city." [98] It is no answer that the police discriminated against these pickets only occasionally, for the constitutional vice is that the law allows them to discriminate at all.

The situation here may also be compared to the recent Supreme Court opinion in *Brown v. Louisiana*, 383 U.S. 131 * * * (1966). In that case, five Negroes were arrested for sitting in a library reading room. In describing their conduct, the Supreme Court explained, (383 U.S. at 139):

"Petitioners' deportment while in the library was unexceptionable. They were neither loud, boisterous, obstreperous, indecorous nor impolite. There is no claim that, apart from the continuation—for ten or fifteen minutes—of their presence itself, their conduct provided a basis for the order to leave, or for a charge of breach of the peace."

Reversing the conviction for breach of the peace, the Court stated (383 U.S. at 141-143):

"We are here dealing with an aspect of a basic constitutional right—the right under the First and Fourteenth Amendments guaranteeing freedom of speech and of assembly; and freedom to petition the Government for a redress of grievances. The Constitution of the State of Louisiana reiterates these guaranties. See Art. I, §§ 3, 5. As this Court has repeatedly stated, these rights are not confined to verbal expression. They embrace appropriate types of action which certainly

include the right in a peaceable and orderly manner to protest by silent and reproachful presence, in a place where the protestant has every right to be, the unconstitutional segregation of public facilities. Accordingly, even if the accused action were within the scope of the statutory instrument, we would be required to assess the constitutional impact of its application, and we would have to hold that the statute cannot constitutionally be applied to punish petitioners' actions in the circumstances of this case. See *Edwards v. South Carolina*, supra, 372 U.S. at 235, 83 S.Ct. at 683. The statute was deliberately and purposefully applied solely to terminate the reasonable, orderly, and limited exercise of the right to protest the unconstitutional segregation of a public facility. Interference with this right, so exercised, by state action is intolerable under our Constitution. *Wright v. State of Georgia*, supra, 373 U.S. at 292, 83 S.Ct. at 1245.

* * * * *

"A State or its instrumentality may, of course, regulate the use of its libraries or other public facilities. But it must do so in a reasonable and nondiscriminatory manner, equally applicable to all and administered with equality to all. It may not do so as to some and not as to all. It may not provide certain facilities for [99] whites and others for Negroes. And it may not invoke regulations as to use—whether they are *ad hoc* or general—as a pretext for pursuing those engaged in lawful, constitutionally protected exercise of their fundamental rights. Cf. *Wright v. State of Georgia*, supra, 373 U.S. at 293, 83 S.Ct. at 1246."

I would, therefore, hold that section 2318.5, both on its face and as applied, is unconstitutional.

This section 2318.5 carries with it all of the latent dangers described in *Dombrowski v. Pfister*, 380 U.S. 479 (1965). Clearly, arrest and prosecution for the exercise of a federally protected act is punishment for asserting that right and constitutes the attempt to intimidate, threaten, or coerce which in this case is specifically proscribed by 42 U.S.C.A. § 1973i(b) and § 1971. The cost of proceeding court by court

that those presently charged and those yet to be charged under section 2318.5 must bear until their federal rights are vindicated is great. Those already having been subject to arrest have had to post bonds and hire lawyers at considerable cost. Those already having been subject to arrest and those too timid to dare to assert their rights in the face of imminent arrest have been subjected to an illegal restraint on their liberty. The presence of an unresolved criminal charge may hang over the heads of these plaintiffs for years while they track their cases to the Supreme Court through the state courts, if we do not enjoin any further proceedings against them. In *Dombrowski v. Pfister*, 380 U.S. 479 (1965), at 486, the Supreme Court said:

"A criminal prosecution under a statute regulating expression usually involves imponderables and contingencies that themselves may inhibit the full exercise of First Amendment freedoms. [Citations omitted.] When the statutes also have an overbroad [100-106] sweep, as is here alleged, the hazard of loss or substantial impairment of those precious rights may be critical. For in such cases, the statutes lend themselves too readily to denial of those rights. The assumption that defense of a criminal prosecution will generally assure ample vindication of constitutional rights is unfounded in such cases."

The Court went on to recognize that the "chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure." 380 U.S. at 487. In a case such as the instant case, the Supreme Court said (380 U.S. at 492, 494):

"In such cases, abstention is at war with the purposes of the vagueness doctrine, which demands appropriate federal relief regardless of the prospects for expeditious determination of state criminal prosecutions."

"So long as the statute remains available to the State the threat of prosecutions of protected expression is a real and substantial one. Even the prospect of ultimate

failure of such prosecutions by no means dispels their chilling effect on protected expression." (Emphasis added.)

See also *NAACP v. Button*, 371 U.S. 415 (1963).

The danger to freedom of speech and assembly of such a broad and vague delegation of power as here involved is too great to expose it to the long road of case-by-case litigation in the hope that some day the statute's reach will be narrowed to constitutionally permissible limits. The court's injunction may always be narrowed if and when the appropriate appellate courts of Mississippi construe the statute in all its vague peripheries. The real answer is that if the legislature desires to legitimately protect access to its public buildings, it must do so by a statute appropriately drawn.⁵⁸ Therefore, the injunction should issue as prayed.⁵⁹ I respectfully dissent.

⁵⁸ There is no contention here that adding "unreasonably" to the statute has altered its scope. On the contrary, the defendants argue that the statute should always have been interpreted as if this word were present and that the persons arrested did unreasonably block the Court House. This record illustrates that this word cannot save the statute.

⁵⁹ See *NAACP v. Thompson*, 357 F. 2d 831 (5 Cir. 1966).

[107] ORDER OF THE UNITED STATES DISTRICT COURT
DECEMBER 24, 1966

JUDGMENT

This cause coming on for hearing by the Court on the previous record and supplementary evidence and testimony in this case; and the Court having rendered its opinions which sufficiently contain the requisite findings and conclusions herein; and being of the opinion that the complaint of the plaintiffs in this class action is without merit and should be dismissed:

It Is, Therefore, Ordered, Adjudged and Decreed by the Court that the amended complaint of Reverend John Earl Cameron and Mrs. Victoria Jackson Gray and all members of such classes is without merit and is dismissed with prejudice and said plaintiffs are assessed with all costs to be taxed according to the rules of this Court and for which proper process may issue. The extant restraining orders of this Court which have operated as a stay of criminal proceedings against the numerous parties to this suit in the state court are abated and dissolved within thirty days after this date to enable such parties to apply for further relief here or in the Supreme Court against such prosecutions in the interim.

[108] Ordered, Adjudged and Decreed, this 23 day of December A.D., 1966.

Jas. P. Coleman, United States Circuit Judge.
Harold Cox, United States District Judge.

Honorable Richard T. Rives, United States Circuit Judge,
dissents.

[109] NOTICE OF APPEAL TO THE SUPREME COURT OF
THE UNITED STATES

I. Notice is hereby given that the Reverend John Earl Cameron individually and as representative of all others similarly situated and Mrs. Victoria Jackson Gray, individually and as representative of all others similarly situated, plaintiffs in the herein action, hereby appeal to the Supreme Court of the United States from the order of this Court of December 23, 1966 dismissing the complaint herein and denying the requests for injunctive relief and from every part thereof.

This appeal is taken pursuant to 28 U.S.C. 1253.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

a) The original and amended complaints of the plaintiffs.

b) The motion for the convening of three-judge statutory court.

[110] c) The order convening the three-judge statutory court.

d) The answers of the defendants.

e) All affidavits filed by plaintiffs and defendants.

f) The original majority opinion and findings of fact of the district court and the dissenting Opinion of Circuit Judge Rives.

g) Plaintiffs first notice of appeal to the Supreme Court, filed on August 7, 1964.

h) The order of the Supreme Court remanding the cause to the District Court for further consideration.

i) The transcript of the hearing before the District Court, held on October 15, 1965, pursuant to the order of remand of the Supreme Court.

j) All affidavits and exhibits filed by plaintiffs and defendants in connection with said hearing of October 15, 1965.

k) The order, Findings of Fact and Conclusions of Law of the District Court of December 23, 1966, the opinions of Circuit Judge Coleman, Judge Cox and the dissenting opinion of Circuit Judge Rives.

III. The following questions are presented by this appeal:

1. Whether the responses of the majority of the District Court to the questions placed to it by the Supreme Court in the *per curiam* remand order were improper and erroneous?

2. Whether 28 U.S.C. Sect. 2283 bars a federal injunction in this case?

3. Whether suits under 42 U.S.C. 1971 *et seq.* and 42 U.S.C. 1983 come under the "expressly authorized" exception to Section 2283?

[111] 4. Whether the relief sought is proper in light of the criteria set forth in *Dombrowski v. Pfister*, 380 U.S. 479?

5. Whether Mississippi House Bill 546, Chapter 343, Mississippi Laws 1964 is violative of the Constitution of the United States and in particular the First, Fifth, Thirteenth, Fourteenth and Fifteenth Amendments thereto, both on its face and as applied herein?

6. Whether the facts as proven in the evidentiary hearing of October 15, 1965 pursuant to the remand order of the Supreme Court require the granting of the injunctive relief prayed for in light of the criteria set forth in *Dombrowski v. Pfister*?

* * * * *

CIVIL ACTION NUMBER 1891 (H)

OCTOBER 15, 1965

REVEREND JOHN EARL CAMERON, ET AL

V.

HONORABLE PAUL JOHNSON, ET AL

FILED: 4-13-64

TRIAL ON MERITS OCTOBER 15,
1965 AT BILOXI, MISSISSIPPI

EXHIBITS

NUMBER: DESCRIPTION:

SPONSOR:

IDENTI-

FICATION: EVIDENCE

✓P-1 8X10 PHOTO showing picket line on April 10, 1964 around Forrest County Courthouse

Keith Brown

X

✓P-2 8X10 PHOTO showing picket line on April 10, 1964

Keith Brown

X

✓P-3 Hand-drawn sketch showing general area of picket line around Forrest County Courthouse on April 10, 1964

Keith Brown

X

✓P-4 8X10 PHOTO showing picket line on April 10, 1964 with picketers displaying various posters

Kenneth Vaux

X

✓P-5 21X27 POSTER used by picketers with notation, "Can you vote on who spends the taxes you pay? Register now."

✓(Ex. P-5 not subject to copy-omitted at request of Attorney L. H. Rosenthal)

Rev. John E. Cameron

X

✓D-1 8X10 PHOTO showing Main Street running North & South, picture taken from the North side facing South showing sidewalk (approximately 2 1/2 ft.)

James K. Dukes

X

✓D-2 8X10 PHOTO taken in the grassy area showing NE corner of Courthouse showing entrance into Home Demonstration Office

James K. Dukes

X

✓D-3 10X12 PHOTO with camera looking in a southerly direction with letter "a" designating door of Home Demonstration Office

James K. Dukes

X

CIVIL ACTION NUMBER 1891 (H)

E X H I B I T S (Continued)

IDENTIFICATION: EVIDENCE

NUMBER: DESCRIPTION:SPONSOR:

✓D-4 8X10 PHOTO with letter "b" indicating entrance to County Courtroom and letter "c" indicating small sidewalk

James K. Dukes

X

✓D-5 Certified copy of House Bill No. 14, approved July 9, 1964

X

WITNESSES FOR PLAINTIFFS

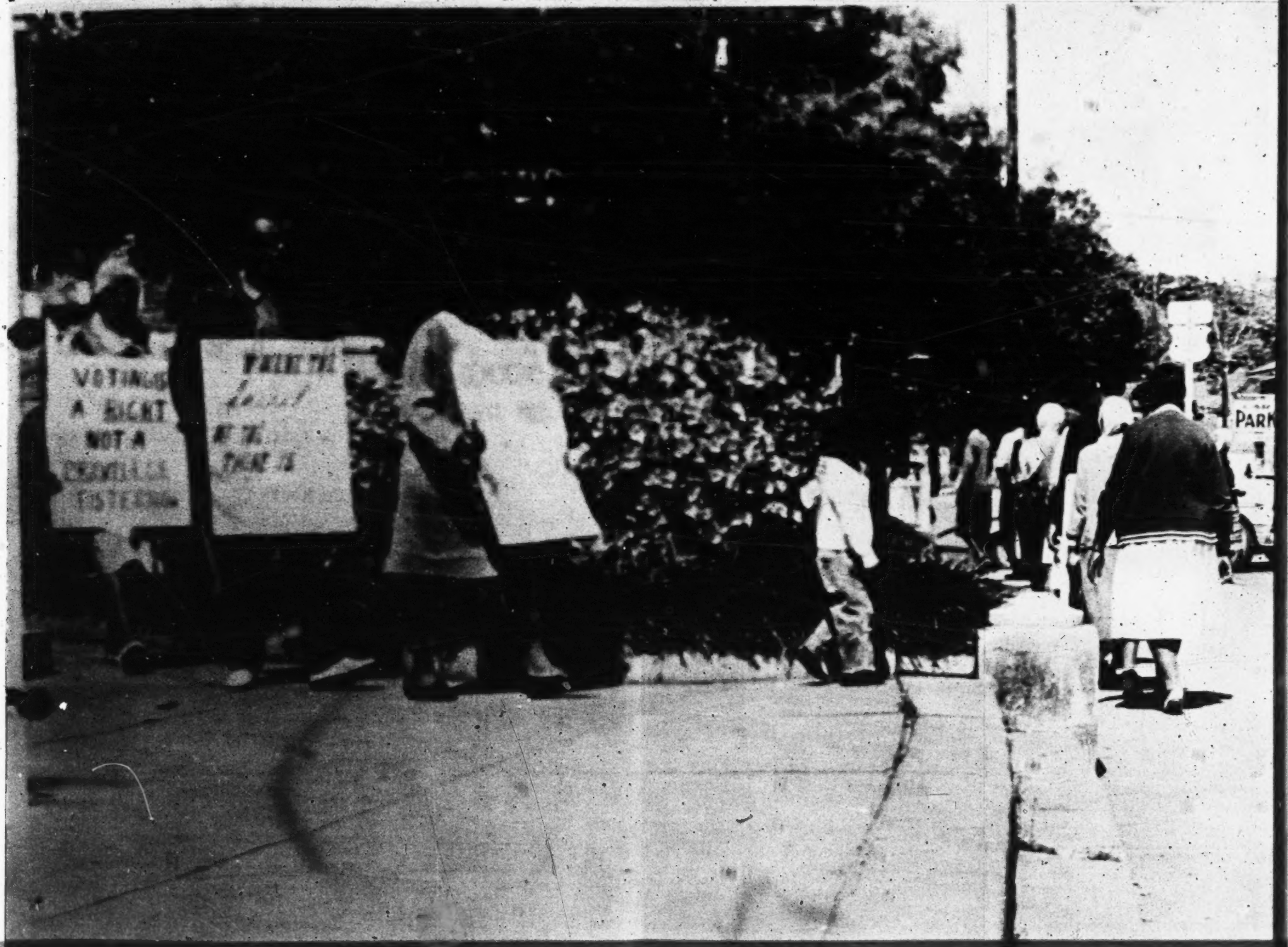
1. Reverend Keith Brown
(White) 414 Gardner Place, Pittsburg, Pa. Minister for 3 1/2 years, United Presbyterian Church. Arrested in picket line on April 10, 1964.
2. Reverend Kenneth Vaux
(White) Watseka, Illinois. Minister United Presbyterian Church. Arrested in picket line on April 10, 1964.
3. Reverend John Mehl
(White) Pittsburg, Pa., Minister for 3 years United Presbyterian Church. Arrested in picket line on April 10, 1964.
2. Reverend Kenneth Vaux
(RECALLED)
4. Mrs. Mary Williams
(Negro). Hattiesburg, Mississippi. Arrested in second picket line on April 10, 1964 (P. M.O (Negro) 401 Ashford Street, Hattiesburg, Miss. Minister Sweet Pilgrim Baptist Church for approximately 13 years.
5. Reverend John Cameron
921 Mobile Street, Hattiesburg, Mississippi. Taught citizenship class and active in voter registration drives.
6. Mrs. Peggy Jean Conner
(Negro) Hattiesburg, Mississippi. Member of Committee of 100, and father of Mrs. Corner.
7. John H. Gould

WITNESSES FOR DEFENDANTS

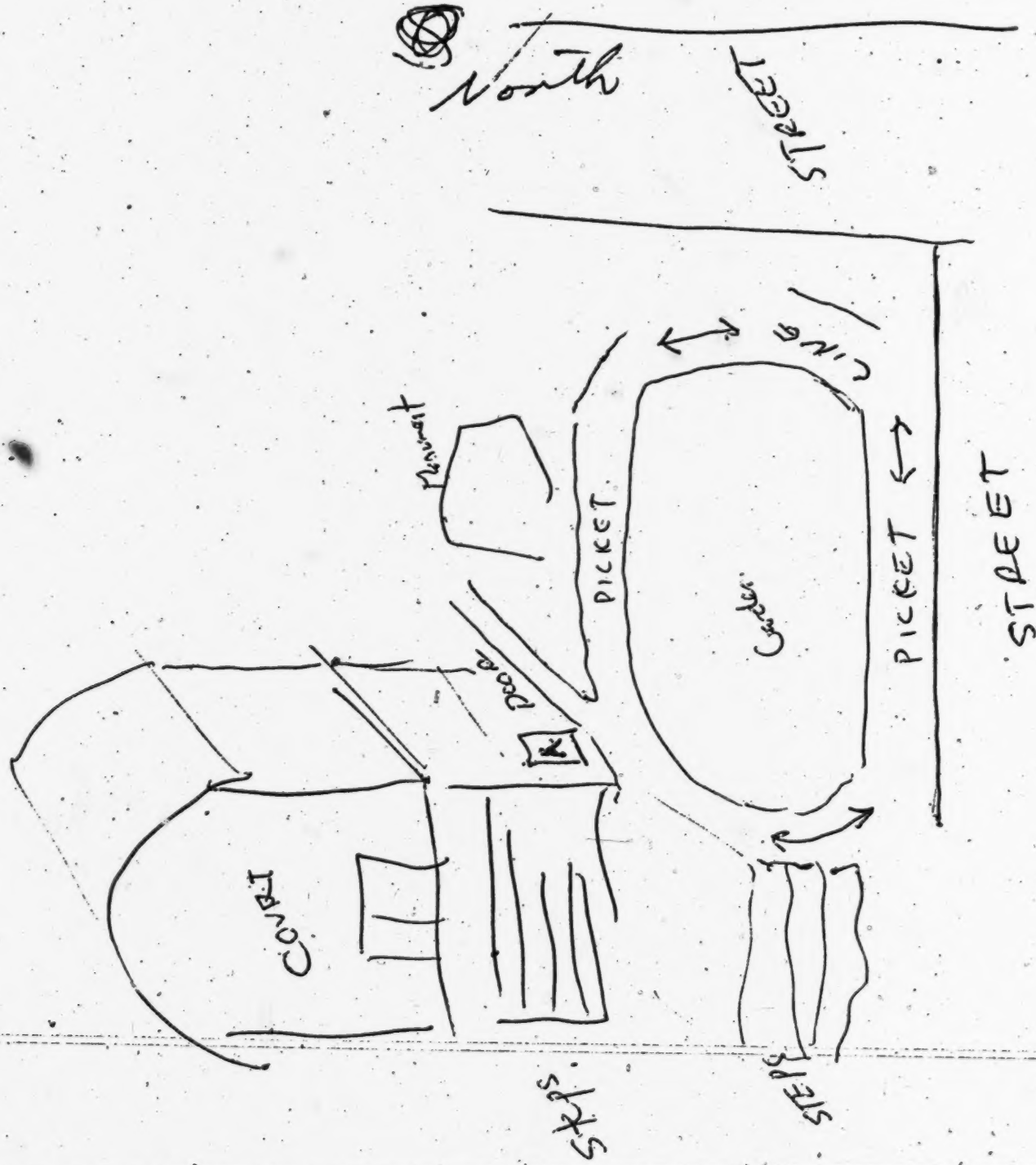
1. James K. Dukes
(White) Hattiesburg, Mississippi. ONE OF THE DEFENDANTS in instant cause and County Prosecuting Attorney of Forrest County since January 6, 1964.
2. Mrs. Pearl Burkett
Hattiesburg, Mississippi. Home Demonstration Agent of Forrest County. (WHITE)
3. Selby Bowling
(WHITE) Hattiesburg, Mississippi. President of Forrest County Board of Supervisors.
4. Charles Morgan
(WHITE) 201 Cheryl Avenue, Petal, Mississippi. Deputy Sheriff of Forrest County since January 6, 1964.

PLAINTIFFS TO SUBMIT BRIEFS TO ALL THREE JUDGES BY OCTOBER 29th.
DEFENDANTS TO SUBMIT BRIEFS TO ALL THREE JUDGES BY NOVEMBER 5th.





West



Sears Roebuck.



East

EXHIBIT P-4

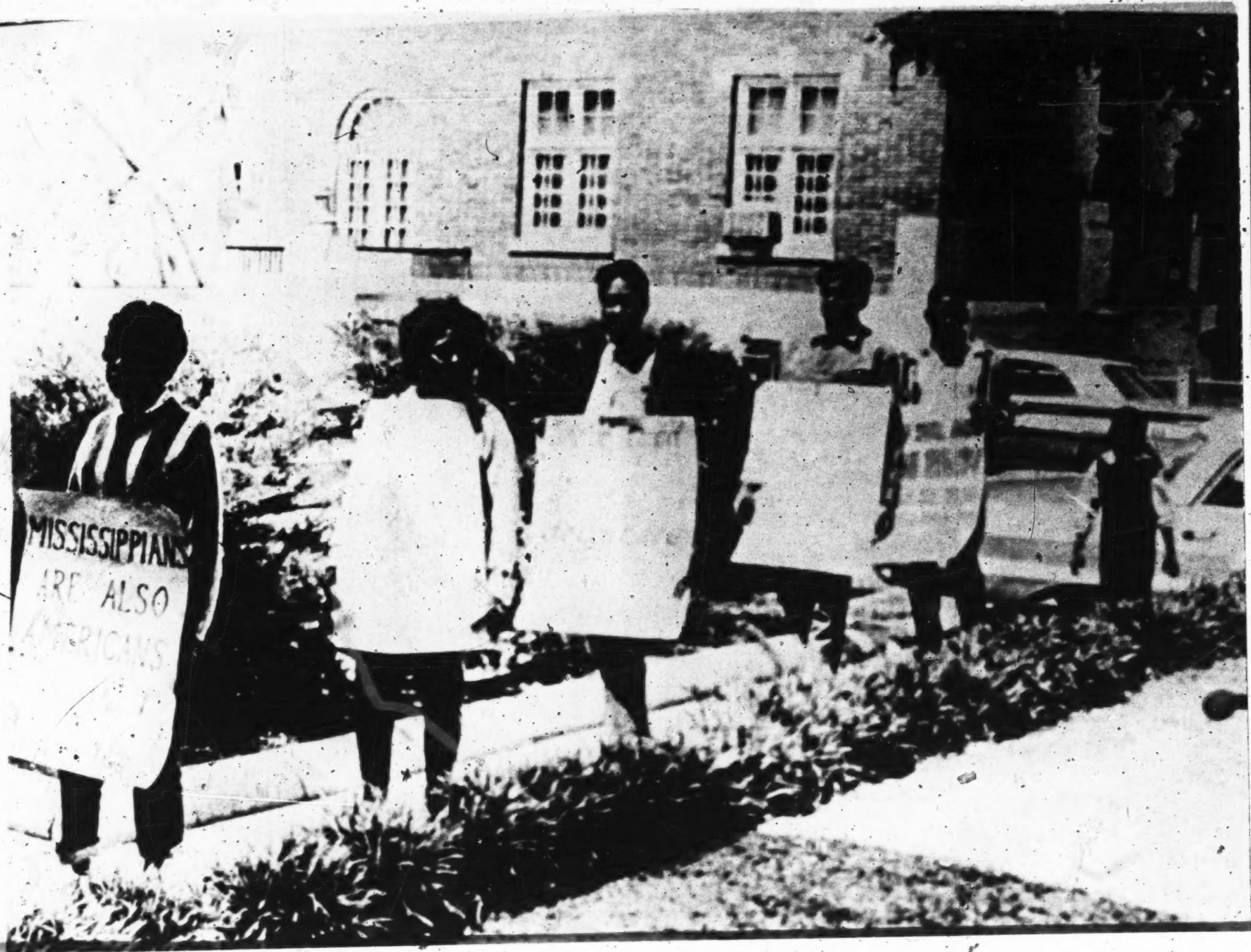
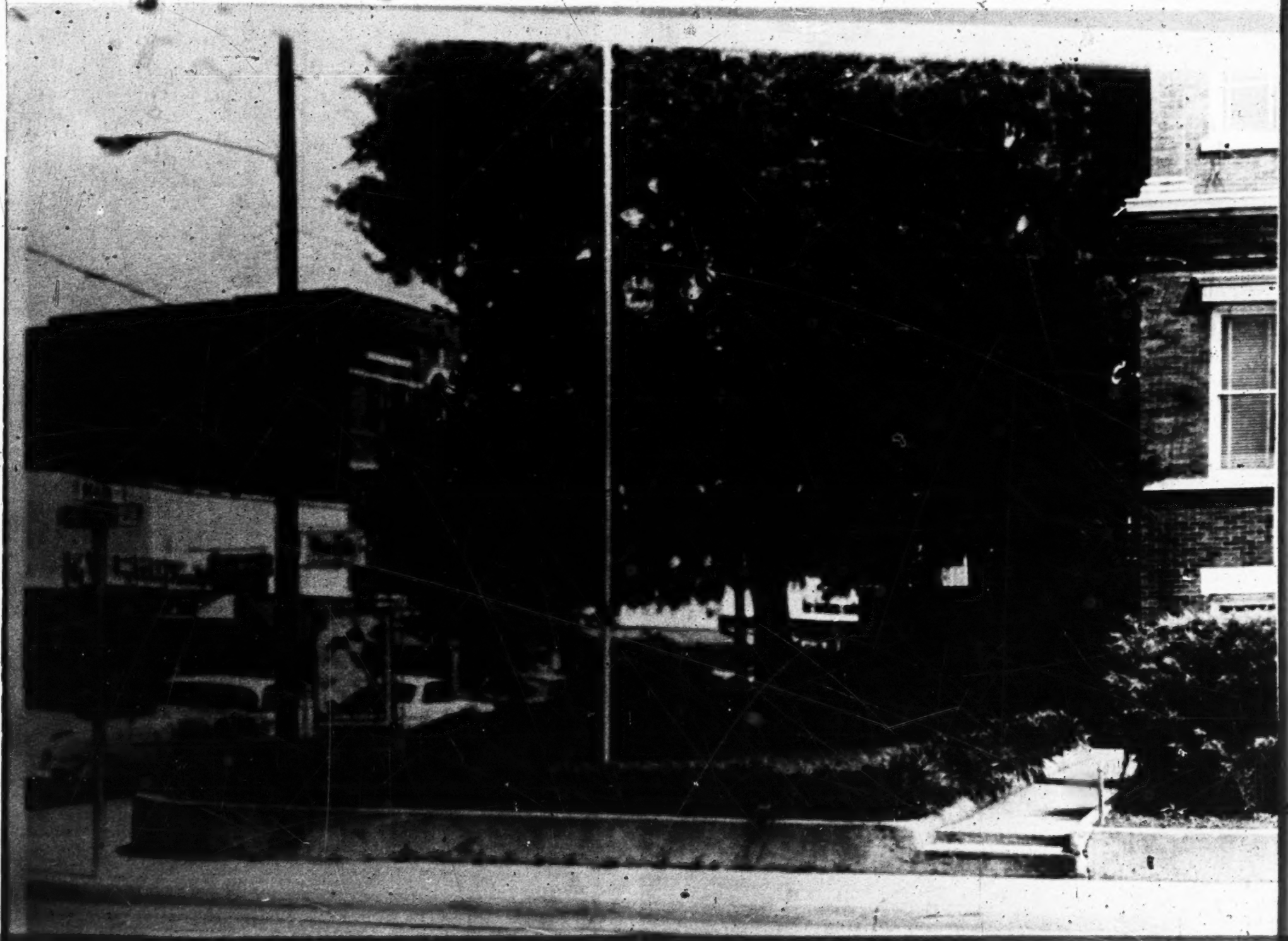


EXHIBIT D-1



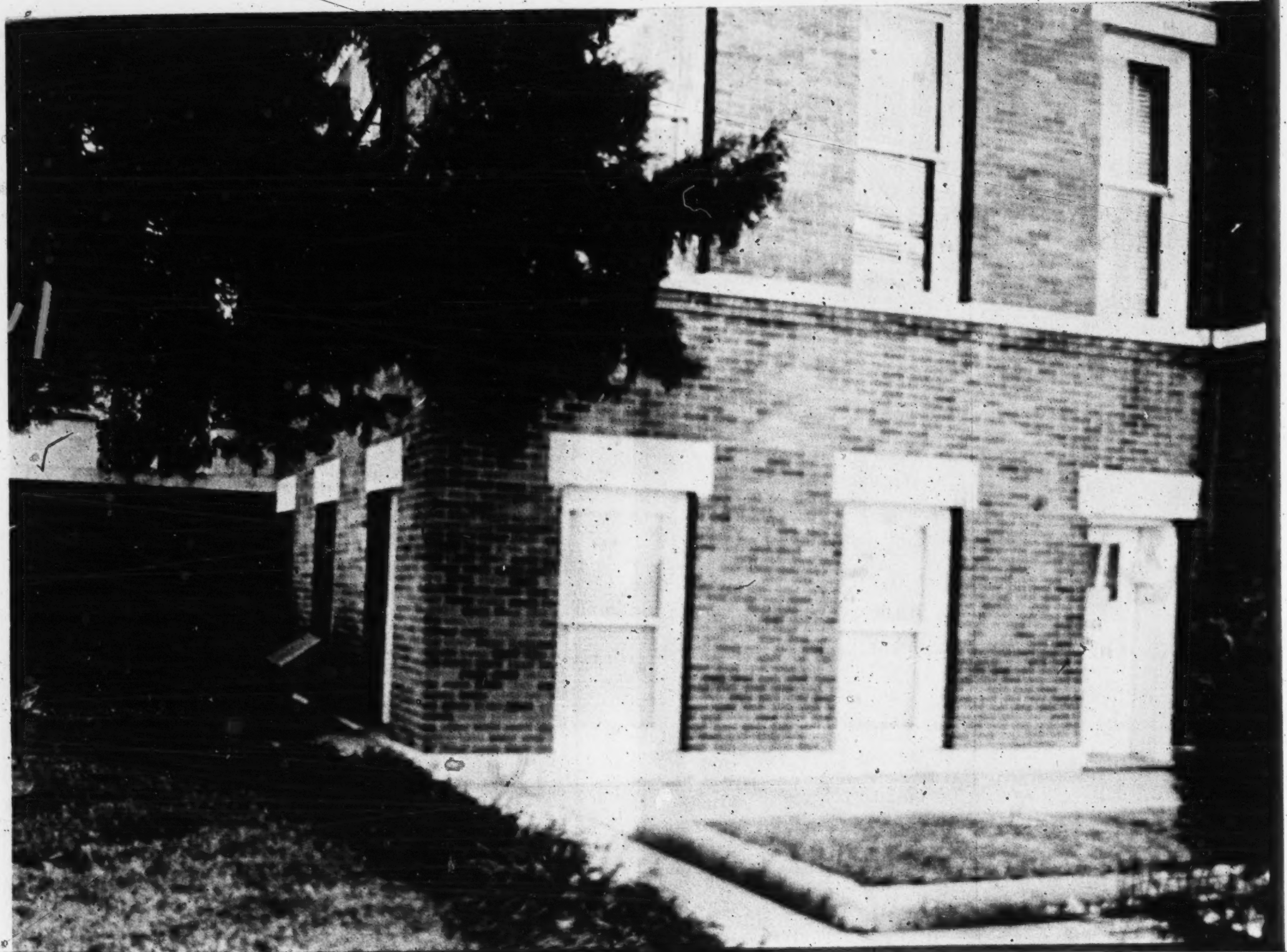


EXHIBIT D-3



EXHIBIT D-4



State of Mississippi



Office of Secretary of State

Jackson

*I, Heber Ladner, Secretary of State of the State
of Mississippi, do hereby certify that the within and
attached is a true and correct copy of*

HOUSE BILL NO. 14

*LAWS OF MISSISSIPPI OF THE FIRST EXTRAORDINARY SESSION OF
1964.*

Given under my hand and Seal of

Office this the 13th day of July, 1964

Heber Ladner
Secretary of State



House Bill No. 14

AN ACT TO AMEND SECTION 1, HOUSE BILL NO. 546, REGULAR SESSION 1964, SO AS TO PROHIBIT UNREASONABLE INTERFERENCE WITH FREE INGRESS OR EGRESS TO AND FROM ANY PUBLIC BUILDINGS OR PREMISES, COURTHOUSES, PUBLIC STREETS AND SIDEWALKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 1, House Bill No. 546, Regular Session 1964,

is hereby amended to read as follows:

Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from any public premises, State property, county or municipal courthouses, city halls, office buildings, jails, or other public buildings or property owned by the State of Mississippi, or any county or municipal government located therein, or with the transaction of public business or administration of justice therein or thereon conducted or so as to obstruct or unreasonably interfere with free use of public streets, sidewalks, or other public ways adjacent or contiguous thereto.

SECTION 2. Any person guilty of violating this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars (\$500.00), or imprisoned in jail not more than six (6) months, or both such fine and imprisonment.

SECTION 3. This act shall not be construed to affect any suit or prosecution now pending in any court.

SECTION 4. This act shall take effect and be in force from and after its passage.

APPROVED JULY 9, 1964



[Tr. 112] Hearing of October 15, 1965

Be It Remembered that on, to-wit: Friday, October 15, 1965, the above styled and numbered cause came on for hearing before Honorable RICHARD T. RIVES, United States Circuit Judge for the Fifth Circuit, Honorable J. P. COLEMAN, United States Circuit Judge for the Fifth Circuit, and Honorable WILLIAM HAROLD Cox, United States District Judge for the Southern District of Mississippi, in the Southern Division, at Biloxi, Mississippi, when the following proceedings were had and entered of record:

By Judge Rives: Counsel, give the appearance for the record.

By Mr. Rosenthal: Yes sir. L. H. Rosenthal, Mississippi Bar, Arthur Kinoy, New York Bar, Benjamin Smith of the Louisiana Bar.

By Judge Rives: Are the defendants ready?

By Mr. Wells: Yes sir, we are ready if Your Honors please.

By Judge Rives: Defendant's counsel may give your appearances.

By Mr. Wells: Will S. Wells, Assistant Attorney General, Mississippi, representing the defendants. I would like to make this statement if the Court please. Mr. Jim [Tr. 113] Finch, District Attorney of the Twelfth Judicial District, he is a defendant in this case and also appears previously as counsel and Mr. Bud Gray, the Sheriff, of Forrest County, are not here today. They are in New Orleans having to be there on an extradition hearing. Mr. Gray being the authorized agent authorized to accept prisoners that's being extradited and Mr. Finch being the District Attorney prosecuting and they wanted me to explain to the Court why they weren't here but that will not interfere with us going on.

By Judge Rives: Does either side desire the rule? Does Plaintiff wish the rule, Mr. Rosenthal?

By Mr. Rosenthal: I had planned to ask co-counsel and I wouldn't want to ask that the rule be invoked by our side until.

By Mr. Wells: Yes, sir, Your Honor, we would like the rule invoked.

By Judge Rives: We want all the witnesses who are pres-

ent then to come around and be sworn. I understand the custom here is to swear the witnesses separately so instead of bringing them all around to be sworn we will bring the witnesses around one at a time to be sworn.

[Tr. 114] (Rule Invoked and all witnesses removed from courtroom.)

By Mr. Wells: If the Court please, Mr. Dukes, Mr. James Dukes, the County Attorney, is one of the defendants in this case. He probably will testify. As I understand he will be excluded from the rule provided of course he testified first.

By Judge Rives: If he is an attorney he would be excused. Are the parties in a position to read out the names of the witnesses who will be used? Are you in a position to do so, Mr. Rosenthal?

By Mr. Rosenthal: No sir, I am not prepared to read the complete list of all our witnesses.

By Judge Rives: Do you have the names of those who are here?

By Judge Cox: I would fine these lawyers for not being here, Judge. I am not disposed to put up with this kind of foot dragging. I am disposed to hold these lawyers in contempt for not being here. Whether they know it or not they are charged with knowing what they should know and could know and I am disposed to fine each one of them \$50.00. It's \$50.00 right now. It might be more a little [Tr. 115] later. They were notified by the Clerk nine o'clock. Looks to me like this is a rather unusual indifference. I would like to have a good explanation and it better be pretty good as far as I am concerned.

By Judge Rives: We will see what explanation they have when they come.

By Judge Coleman: Mr. Rosenthal, can you give us any reason for their tardiness here?

By Mr. Rosenthal: No, sir, I saw them last night as late as one o'clock and they were under the impression at that time that the case had been set for ten o'clock, however I at that time I showed them this notice which was sent out by Judge Cox's office I believe or by the Clerk's Office and we all three of us looked at it and said nine o'clock.

By Judge Coleman: You know of any reason that would

prevent their being here? You were able to be here on time and ahead of time, in fact you were here when we got here this morning.

[Tr. 116] By Mr. Rosenthal: Yes sir. The only thing I can possibly imagine that they couldn't be here they may have been either stopped by police for violating a traffic ordinance or they could have been involved in an accident. I believe that they are conscientious and I don't believe they just completely decided well we will have breakfast and then show up in court and I believe its really something serious why they are not here.

By Judge Coleman: They are the ones who are bringing this action and who are seeking the assistance of this Court and above all others they should have been here first.

By Mr. Rosenthal: If I could ask the Court for about a ten minute recess so I could attempt to find out if they have left the motel at least and if they have——

By Judge Rives: We will take a short recess.

(Court recessed at 9:10 A.M. for few minutes.)

By Judge Rives: The Court would like to hear from counsel who are late.

By Mr. Smith: Yes, Your Honor, I would like to apologize to the Court, I lost my way in trying to find the courtroom, [Tr. 117] Judge Rives, I went the wrong direction. I left in time to find it but then found I was going to New Orleans instead of Biloxi so I offer the Court my humble apologies.

By Judge Cox: Found out you were where?

By Mr. Smith: I was headed for New Orleans, Your Honor, instead of Biloxi, from the motel.

By Mr. Kinoy: I would like to offer the same apologies.

By Mr. Smith: Its really my fault, I was driving and Mr. Kinoy was not.

By Judge Rives: Come to court in a car?

By Mr. Smith: From the hotel where we were staying, yes.

By Judge Cox: Where were you staying?

By Mr. Smith: At the Broadwater Beach.

By Judge Cox: And you went west and you didn't know which way west was?

[Tr. 118] By Mr. Smith: I knew which way east and west

was, Judge Cox, but I didn't know, which way the courtroom was from the hotel.

By Judge Cox: You didn't know the Court was in Biloxi?

By Mr. Smith: I knew it was in Biloxi but I thought I was headed to Biloxi, Judge.

By Judge Cox: Going west to Biloxi?

By Mr. Smith: From the Broadwater Beach.

By Judge Rives: Very well, gentlemen. Gentlemen, under the circumstances the Court will excuse counsel.

By Mr. Smith: Thank you.

By Mr. Kinoy: Thank you, Your Honor.

By Judge Rives: Will the plaintiff give us the list of witnesses you intend to use?

By Mr. Smith: Yes, Your Honor. Your Honor, we intend [Tr. 119] to use as witnesses Reverend Kenneth Vaux, V a u x, Reverend Keith Brown, Reverend John Mehl, M e h l, Mrs. Jean Gould, G o u l d, Conner, C o n n e r, Reverend Robert Beech, B e e c h, Mr. Lawrence Guyot, G u y o t. Now there may be one or two others, Your Honor, and I will furnish you their names as soon as we have them available.

By Judge Cox: Why don't you know who you are going to use?

By Mr. Smith: We had intended to use between six and seven witnesses, Judge, if possible.

By Judge Cox: And you don't know who they are?

By Mr. Smith: Well, they would be Mr. John Gould, G o u l d, and possibly a Mrs. Ceola Wallace, C e o l a Wallace, and one other witness if one of those does not show would be the Reverend John Earl Cameron.

By Judge Cox: But that would be an alternative witness.

By Mr. Smith: Yes. I am not absolutely — that he is on his way from Hattiesburg but I have been assured that he is going to be here.

[Tr. 120] By Judge Cox: He is a plaintiff?

By Mr. Smith: Yes sir, the plaintiff in this suit, yes.

By Judge Cox: All Right.

By Mr. Smith: Thank you.

By Judge Rives: The rule has been invoked and all the witnesses will be excluded from the court room.

By Mr. Smith: Yes sir.

By Judge Rives: Can the defendant give us a list of the witnesses it intends to use.

By Mr. Wells: Beg your pardon, if the Court please.

By Judge Rives: Can you give us a list of the witnesses you intend to use?

By Mr. Wells: Yes sir. If Your Honor please, Mr. Selby, Selby, Bowling, Bowling, Mr. Charles Morgan, Mrs. [Tr. 121] Pearl Burkett, Burkett, Mrs. James Dukes, and if the Court please, if this case should run longer than is expected and Mr. Gray can get through in New Orleans and get here we will use him perhaps if he gets here but we would not want to wait on him, its just a possibility.

By Judge Cox: Is that the Sheriff?

By Mr. Wells: Yes sir. And then by stipulation, the Court please, we will have an affidavit as to some pictures that were taken which have been stipulated by counsel introduce pictures identified by the affidavit.

By Judge Cox: Is the record which is already made in this case to be treated and considered as a part of the record on the trial in this case?

By Mr. Wells: If Your Honor please, —

By Judge Cox: Has there been any understanding about that?

By Mr. Wells: I had called earlir in the week, I called for Mr. Kinoy, he was out, and I talked to Mr. Kunstler and tried to reach some understanding that the affidavits and exhibits which had alreday been introduced could [Tr. 122] considered as a part of the record and he explained to me that he would check with other counsel and I later talked with Mr. Smith and he did not want to agree that those affidavits might be, so there is no stipulation and understanding about those affidavits that are there.

By Mr. Smith: I had informed Mr. Wells, Your Honor, that I had no objection to the introduction of the affidavits of the photographers to identify the pictures and as a matter of fact that that wouldn't even be necessary as far as I was concerned, but that since we were taking live testimony and our witnesses would be on the stand and subject to cross examination I felt that in protection to my clients that the other witnesses should be here and cross examined.

By Judge Coleman: What do you have to say about the fact that this case is simply here on remand from the Su-

preme Court of the United States for further consideration and reconsideration and what is already in the record is in the record.

By Mrs. Smith: There is no question about that, Your Honor. I felt however that certainly Sheriff Gray's affidavit [Tr. 123] is in the record and I think that we are going to find that it would be more helpful to the Court if we were able to talk with Sheriff Gray on the witness stand and it would fill out the facts in this case and give the Court an opportunity to reconsider the facts in light of live testimony and I think facilitate the Court in its understanding.

By Judge Coleman: Isn't it a fact though that this is simply a supplemental hearing to the one that's already been held?

By Mr. Smith: Yes, I think so. I don't there is any way we could take the affidavits out of the record, Judge Coleman. I just think that what we are going to have to do is consider this case again in light of the record as supplemented as you say by this live testimony.

By Judge Coleman: Thank you.

By Judge Rives: Gentlemen, we will swear the witnesses separately as they come around. Will the plaintiff call his first witness.

By Mr. Smith: As my first witness I would call Reverend Keith Brown.

[Tr. 124] By Mr. Wells: Keith Brown?

By Mr. Smith: Keith Brown.

Keith Brown called as a witness for and on behalf of Plaintiff, was sworn and testified as follows:

By Mr. Wells: If Your Honor please, its a good distance from here to the witness stand. May I sit over on that side so I can hear these witnesses?

By Judge Cox: You can drag up a chair there a little bit closer.

By Mr. Wells: If I may do so.

By Mr. Smith: Would the Court like for me to conduct the examination from here or from counsel chair.

(Discussion between counsel and the court as to seating arrangements for counsel not made a part of this record.)

Direct examination.

By Mr. Smith:

Q. Will you state your name for the Court please?

A. Keith Brown.

Q. And your address please?

A. 414 Gardner Place, Pittsburgh, Pennsylvania.

[Tr. 125] Q. And what is your occupation, Mr. Brown?

A. Minister Presbyterian Church.

Q. And how long have you been a minister?

A. Three and a half years.

Q. In April of 1964 were you in Hattiesburg, Mississippi, Forrest County?

A. Yes, I was.

Q. And would you tell us the circumstances under which you came there?

A. I was there to assist COFO.

Q. That is the Council of Federated Organizations?

A. That's correct in their voter registration drive.

Q. Could you tell us from where you had come?

A. I came from Pittsburgh, Pennsylvania.

Q. And what were the circumstances under which you left Pittsburgh, I mean what caused you to come there?

A. I was asked by a member of the Pittsburgh Presbytery which is one of the boards of our church if I might come to Hattiesburg, Mississippi to assist in this voter registration drive. They in turn had heard from our commission on religion and race who in turn had heard from the National Council of Churches a request had come to them from COFO to send help in this voter registration drive. At that time I had various questions about whether we ought to come uh [Tr. 126] uh one of the things that was in my mind was whether or not we from the north should come south to help in such a drive, whether the church ought to be involved in a voter registration drive and after wrestling with this for several weeks I felt that we ought to come and to be with the people in this endeavor. First of all, I asked several questions about—

By Judge Rives: His mental reactions are hardly pertinent, counsel.

By Mr. Smith: All right, I will terminate that.

Q. Now, Reverend Brown, what did you first do when you came to Hattiesburg in early April, 1964.

A. Well, we reported to the COFO office in Hattiesburg and asked what we might do to assist in this operation and they told us that—

By Mr. Wells: Court please, we will object to any conversation he had.

By Judge Rives: That's hearsay, objection sustained.

By Mr. Smith: All right.

Q. You were then asked by COFO to do certain things I take it?

[Tr. 127] A. That's correct.

Q. What did you actually do?

A. Several things one of which was to go into various homes asking people concerning their voter registration and whether they had registered, if not why not, this kind of thing, and we also were on the picket line and assisted in this.

Q. When did you start walking on the picket line?

A. I arrived Monday morning and I began to identify with the picket line Monday afternoon.

By Judge Cox: Did you understand what you were doing to be picketing?

By the Witness: Yes sir. You mean what the picketing represented?

By Judge Cox: Yes sir, what you were doing, were you picketing, you understood what you were doing was picketing?

By the Witness: Yes. I understood before I came that there were several lines of possibility in our involvement one of which we would be asked to picket so we or I had at least considered that as a possibility and whether I would come with that as a very live option of my involvement.

[Tr. 128] By Mr. Smith:

Q. What was the reason or the purpose of the picketing Reverend Brown?

A. Well, the reason of the picketing as far as I understood was to assist the negro people in several ways, one

of which was to give to the negro community a source of strength and confidence that there were people who cared about their movement and their desire to register, that perhaps our being there might be possibly a deterrent to any violence that might accrue, that also the picket line as I understood it would also be a word to the community at large concerning the state of unrest in the community, negro community concerning this right and others that all was not well in the negro community. I think to me the picket line represented these kinds of things, a deterrent to violence, a source of—

By Judge Cox: I believe we are getting a sermon here more than anything else.

By Judge Rives: A good part of this evidence is not pertinent.

By Mr. Smith: I will hold down the answers, Your Honor.

Q. When you walked the picket line, Mr. Brown, would [Tr. 129] you describe the days that you walked and what actually occurred on those particular days?

A. Well, as I say Monday I picketed in the afternoon and we disbanded that day and every day that I was on the picket line at about four o'clock.

Q. How many people were on the picket line the first time you walked it?

A. I believe there were approximately ten people the first time I walked it.

Q. Were there any other ministers besides yourself?

A. Yes, there the first day I believe there were three other ministers there I think.

Q. Were there signs on the people that walked the picket line?

A. Yes, each of was given a sign.

Q. And what did the signs say, do you recall?

A. Various things concerning each individual has a right to a vote, you can't love God if you hate your brother, things of this nature.

Q. Were you in anyway molested during the time of the first picket line?

A. No, not at all.

Q. Were you observed by the law enforcement officials of Hattiesburg and of Forrest County?

A. Yes. I think every day that I picketed there was a [Tr. 130] policeman right across the street from us at the Sears and Roebuck Store and he was there most every day as I recall.

Q. And were you molested by any of the townspeople?

A. No. From time to time a verbal accosting but nothing more than that.

Q. Did any of the pickets reply to any of these remarks that were passed to them?

A. No, we never did. We did say hello to some people who said hello to us, at least when I was there was never any response to any verbal harassment.

Q. Now were there any people that were prevented from getting into the court house by virtue of the picket line on that first day?

A. No, nor any day that I was there. When we first came they had the picket area delineated by wooden horses and ropes and were told that in our picketing we were to stay within these bounds by the COFO people.

Q. Who told you that? Oh the COFO people told you that. Very good.

A. Yes and this is what we did each day we stayed within the bounds of the delineated picket area and I understood that everytime people had accommodated the words of the authorities, I understand it first embraced the whole court house and when they had been asked to [Tr. 131] stop ringing the court house they had obeyed the authorities at this point.

Q. Now your first picket line the one that you have direct knowledge of was located where, could you describe its perimeter?

A. Well, facing the court house the picket area had been marked off to the right of the court house, there was this garden type area to the right of the court house and there was a walk going around that, we circled that in our picketing. I might also say that when we first came the wooden horses were there and people were still able to walk on the sidewalk.

Q. I am going to show you—

By Judge Coleman: Let me interpolate just a minute to ask this gentleman if he was ever arrested himself or—

By Mr. Smith: (Interrupting) Yes, Your Honor.

By Judge Coleman: I would like to hear about that.

By Mr. Smith: I will get right into that. I will get the pictures in, Your Honor.

By Judge Coleman: All right.

[Tr. 132] By Mr. Smith:

Q. Now, Reverend Brown, you have before you three photographs. Can you identify those photographs for the Court please?

A. Yes. This is a picture of the picket line the day we were arrested. As far as I can tell this one——

By Mr. Smith: I am going to mark that one for identification Brown number 1.

By Judge Cox: She will mark it for you.

By Mr. Smith: Very good.

By Judge Rives: It may be marked for identification.

By Judge Cox: Plaintiff's 1 for identification.

By Mr. Smith: I would like that to be marked Brown 1 for identification.

By Judge Cox: We mark them plaintiff and you can give them any name you want.

By Mr. Smith: All right.

[Tr. 133] By the Witness: More sure this one——

By Mr. Smith: Just a minute.

By the Witness: I would say this is also——

By Mr. Smith: Just a minute, Reverend.

By the Witness: Oh, excuse me.

By Mr. Smith: Now this first picture you say would you repeat again what you said in connection with that?

A. I believe this is picture of the picket line on the day we were arrested.

Q. I see. Are you portrayed in that picture?

A. Yes.

Q. Would you point out for the Court where you are shown?

A. Right here.

Q. Now you were arrested on April the 10th, 1965, 4, is that correct?

A. I believe that's right.

Q. All right. What is the next picture there please?

A. Its another picture I believe the day we were arrested.

[Tr. 134] The reason there's no wooden horses or ropes there and the little fellow the only day I was there the day we were arrested the little fellow was there also.

Q. That small child in the picture?

A. Yes.

By Mr. Smith: All right. I would like for the second picture identified by the witness to be marked for identification as plaintiff's exhibit.

Q. Third picture please what does that portray?

A. I'm not sure, picket line and the court house but I don't know which day.

Q. You are not able to identify that as to time?

A. No.

Q. Very well. You may just leave that there. Now were there entrances to the Court House on the ground floor level?

A. Yes. There was one to my knowledge or remembrance the side of the building there was one.

Q. Now I am going to give you a pad of paper and a pen and ask you to draw a short or a small sketch of the area of the picket line relative to the entrances of the court house if you would please and this should be as of the day of the [Tr. 135] arrest which was the subject of this suit, that is April 10, 1964.

By Judge Coleman: Mr. Smith, while he is drawing that what date was this bill for an injunction filed?

By Mr. Smith: This was filed some I think within 30 days following this arrest, Your Honor. I would have to check the record for the exact date.

By Judge Coleman: I know the record shows. I just thought you could tell me.

By Mr. Smith: I am sorry, I just don't know the exact date sir.

By Judge Cox: 13th of April, 1964.

By Judge Coleman: Was it filed in 64?

By Judge Cox: Yes.

By Judge Coleman: He has been talking about this occurrence in 65.

By Mr. Smith: By error, Judge Coleman, it was 1964.

By Judge Rives: April 10th, 1964.

[Tr. 136] By Mr. Smith: Correct, Judge Rives.

By Judge Rives: Were these pictures taken on the day of the arrest?

By Mr. Smith: We submit that those pictures were taken as of the date of arrest.

By Judge Rives: These two——

By Mr. Smith: (Interrupting) Yes sir.

By Judge Rives: (Continuing) that have been identified?

By Mr. Smith: That's right.

By Judge Rives: They have not yet been introduced.

By Mr. Smith: I am going to ask that they be introduced into evidence in connection with our case. I might say for the record also that these are photographs furnished to me by Mr. Will Wells and were attached to affidavits by photographers which stated and these affidavits are in the record that they were taken on the date of the arrests.

[Tr. 137] By Mr. Wells: The originals of those pictures, if Your Honor please, were filed in the original suit with affidavits and copies were furnished to counsel and we intend to get all those pictures in.

By Judge Cox: I recognize them as already being in the record.

By Mr. Wells: Yes sir, they are.

By Mr. Smith: Yes, I was just calling the Court's attention to them in connection with this witness' testimony to assist in the examination.

By Judge Rives: If there is no objection to them some time might be saved by just saying these pictures are introduced in evidence without objection. Is that correct?

By Mr. Wells: Yes sir.

By Judge Rives: As Exhibits 1 and 2.

By Mr. Smith: Certainly.

(Two photographs above referred to received in evidence and marked Plaintiff's Exhibits 1 and 2.)

[Tr. 138] By Mr. Wells: Let me look at those pictures just one second. And those two pictures were taken on the 10th of April if Your Honor please prior, a short time, very short time prior to the arrests.

By Mr. Smith:

Q. Now, Reverend Brown, would you describe to the Court the perimeter of the picket line as best you can at the same time the physical circumstances of that part of the court house lawn?

A. The perimeter of the picket line?

Q. Yes, as it was on the court house lawn using the diagram so that it might assist the Court if possible?

By Judge Rives: At that time was this?

By Mr. Smith: At the time of the arrest.

By the Witness: It was very similar to the other days. As I recall there were steps, this is the sidewalk and this is the street.

By Mr. Smith:

Q. Is that the main street that Sears Roebuck store is on across from the courthouse?

[Tr. 139] A. Yes, Sears Roebuck store here.

Q. Very good.

By Judge Rives: Write Sears Roebuck if you will.

By the Witness: Oh, OK.

By Mr. Smith:

Q. All right sir.

A. Street, Main Street going here and the sidewalk.

Q. Hold it so the Court can see it, that's the important thing.

A. Sidewalk here, sidewalk here; and I guess steps going up here and the picket line going around here, sidewalk here and then a large—

Q. (Interrupting) Is that the large entrance area to the court house where you have your hand now?

A. No, this is all entrance, we were off to the side of the steps here, this is rather wide sidewalk here, wide here and then marched around here there was a door as I recall it a path beside the court house going to the back or rear of the court house, there was a door here as I recall that went down into an office I guess and uh the perimeter of the picket line always when I was there was always in this general or was always in this area specifically.

[Tr. 140] Q. Where were the barricades that you have previously described?

A. Well, when we first came the first day the barricades were just strung along here along this area and along this area I think it was a kind of peninsula affair, then on this walk here kind of a peninsula effect three-fourths were covered with pickets and we were to stay within those lines always keeping our line in this general area.

Q. Now you were there marching how long before the day of arrest?

A. Well, I had marched Monday, Tuesday, Wednesday, Thursday and we were arrested as I recall Friday.

Q. Had you ever seen anyone obstructed from entering the court house at the corner there where that little door is that you describe?

A. No sir. As a matter of fact one thing I remember as an impression for me was that people didn't seem to be at all afraid of us which somewhat surprised me. I didn't know how the public would react to this line and women with children would often come across here and go into the court house.

By Judge Coleman: Let me make a suggestion you put the letter A on that door he has been asking about so that [Tr. 141] it will have some form of identification.

By Judge Rives: If counsel could put north, south, east and west. I should think you all could stipulate on that.

By Mr. Smith: I will have to bow to Mr. Wells on that because I don't know north, south, east and west on that map and I haven't demonstrated too good a sense of direction this morning already. I don't think I am qualified to put east and west on that thing.

By Judge Cox: I couldn't put it on there either.

By Mr. James Dukes: May I speak if the Court please. The court house if you are standing on the sidewalk facing the front of the court house you are looking west.

By Judge Rives: Will you then put the directions on it?

By Mr. Dukes: Yes sir.

By Judge Coleman: Just put the directions on the map for us, Mr. Dukes.

By Mr. Dukes: All right. Of course we are speaking in general terms north, east, south and west. This is north, [Tr. 142] this is south and this is east.

By Judge Coleman: Just take your pencil and mark it on there please sir.

By Mr. Dukes: He had it on there backwards, if the Court please.

(Mr. Dukes marked direction on above referred to map.)

By Mr. Smith:

Q. Now, Reverend Brown, was there a lady who had an office there at this point marked A that Judge Coleman has referred to at that door or do you know about that?

A. No, I don't know.

Q. Did you notice anyone that you could classify as an employee or a person who occupied office space in that court house coming and going during the time that you were picketing and particularly on the day of the arrest?

A. I couldn't say that I ever noticed anyone that was an employee but I do know that people came out of the court house and I think there was a parking lot in back of the court house, people did seem to come down those steps and go out back.

Q. By that door marked A?

A. Yes.

Q. And toward the direction of the parking lot?

[Tr. 143] A. That's right. I don't know if it was to the parking lot but we did have people on the dates I was picketing but not on the day we were arrested.

Q. Did you notice anyone having difficulty using that route to the parking lot?

A. No.

Q. Now did you ever observe any law enforcement officials going in and out of the court house while this picketing was going on and particularly the day of the arrest?

A. On the day of our arrest I don't recall any law enforcement men going in and out.

Q. Was the main entrance to the court house the steps which you have drawn there in the middle of that large area?

A. The great majority of the people that passed us any of the days I was there would come down this main sidewalk and then up these front steps and into the court house.

Q. Did the picket line in anyway impede that progress?

A. No sir, not even when the wooden horses were there.

Q. I see.

A. The day we were arrested there weren't any wooden barriers.

Q. Now would you tell us about the picket line on the [Tr. 144] day just before the arrest?

A. Well, that afternoon as was our practice we usually started to disband the picket line around four o'clock and as I recall that day about four o'clock several policemen came out and began to break down the wooden barriers which caused me at least some consternation because this hadn't been the practice at least while I was on the picket line for these wooden barriers to be broken down and then as I recall the Sheriff came and asked us for our attention and also Mr. Dukes I believe and then uh uh Mr. Dukes read to us the law and said that and the Sheriff said that we best he would give us five minutes to disband our picket line as I recall and we then disbanded our picket line and went back to COFO office.

By Mr. Smith: I would like to in connection with the witness' testimony I would like to offer, introduce and file in evidence marking same for identification as the Clerk would see fit for plaintiffs' exhibit being the little drawing which the Reverend has made and referred to in his testimony.

By Judge Rives: It will be received in evidence as Ex-[Tr. 145] hibit 3 I believe.

By Mr. Smith: I take it that will be 3.

By Judge Cox: Are you offering it in evidence?

By Mr. Smith: I am sir.

By Judge Cox: All right.

(Received in evidence and marked Plaintiff's Exhibit 3.)

By Mr. Smith:

Q. Now having had the law, having had the law read to you, Reverend Brown, you then went back to the COFO house or unit there in Hattiesburg, is that correct?

A. That's correct.

Q. Did you ministers as well as the COFO workers discuss what had happened as to the reading of the law and the breaking down of the barricades?

A. Yes, we discussed it and what would be the future of such a picket line and whether whether we then had occasion to come back on the picket line because we felt that if we would go back—

By Judge Rives: It is not evidence what they felt.
[Tr. 146] By Mr. Smith: All right, well, that's sufficient.

A. I see.

Q. All right, now did you go back the next day?

A. Yes, we did.

Q. Now at what time did you go back the next day?

A. As I recall we met at the COFO office around nine-thirty, nine o'clock and picked up our signs and began to go up to the picket line actually as had been our practice other than the fact that we were apprehensive this day.

Q. All right. Now were the picket signs on sticks or did they have any boards or sticks on them?

A. No. Our practice was to wear cardboard sign around attached to our body by a string around the neck.

Q. All right. You walked then to the Forrest County Court House?

A. That's correct.

Q. And how many of there were you?

A. Well, I didn't count. I can estimate it approximately thirty people, twenty-eight people I know there were as I remember there were twenty-eight of us arrested and I think everyone was arrested to my knowledge because we all filed into the court house so I would imagine twenty-eight, twenty-eight to thirty. I don't remember anyone [Tr. 147] being released that day.

Q. I see. Now when you got there what did you do?

A. Well, when we came to Sears and Roebuck there was a great crowd of people uh uh which surprised me, well, it didn't surprise me except that I wondered how they knew that we would be arrested that day, at least I began to think this way, this was a spectator group.

Q. Did you have any indication that you were going to be arrested that day?

A. Well, we were apprehensive that we probably would because we were threatened the day before that we would be arrested if we didn't disband the picket line so we were apprehensive about this but we came with the feeling that we were not disobeying this law.

Q. All right go ahead. I mean as to really what you did now. You say you saw this crowd of people over by the Sears Roebuck store.

A. Yes, and it was a crowd on the steps it seems to me the people the Sheriff was standing up there, there was a news mobile there and then uh as I recall policemen permitted us to cross the street and we crossed the street, we were walking by twos and then formed our picket line immediately and began walking where we had walked previously to this day of arrest.

Q. You say there were a crowd of people on the steps, [Tr. 148] you mean the court house steps?

A. Yes sir. Seemed to me there was a crowd of people scattered variously around this area.

Q. I see.

A. These were not our workers.

Q. Were these people on the court house steps blocking the entrance to the court house?

A. Uh these people could have been it seemed to me that they were. I don't know how my memory doesn't serve me here how many people were there but there were quite a few and uh.

Q. Were there any other people in crowds that you saw?

A. Beg your pardon.

Q. Were there any other persons in crowds around there that you saw at the time of the arrest?

A. The only person I really remember recognizing was the Sheriff who was standing up at the court house.

Q. The question perhaps was not properly phrased. Were there any other crowds of people other than those by the Sears Roebuck store and those on the steps of the court house?

A. I don't remember.

Q. Very good. Go ahead then and tell us what happened as you reformed the picket line?

A. Well, we formed the picket line single file and walked [Tr. 149] in the designated area and after we made several rounds the Sheriff stepped into the line and then asked us as I recall to keep the line moving and they marched us around to the back and into the jail.

Q. Now before the Sheriff stepped into line and led you to the jail had there been any complaints given to you by

anyone including the Sheriff that you were blocking the entrance to any of the doors to the court house?

A. No sir, never no one ever said that while I was on the picket line no one ever said to us that we were blocking uh the business of the court house uh—

Q. (Interrupting) Did you see on the day of the arrest and particularly just before the arrest anyone being kept from going into the court house by virtue of this picket line of 28 or 30 people?

A. No sir. Seemed to me again it was a spectator crowd, not a crowd about business. No one tried to break through that I recall except the Sheriff.

Q. Now when you went to the did anyone, strike that. Did anyone resist being arrested by Sheriff Gray at this particular time?

A. No sir, we marched single file back to the jail.

Q. Have you ever seen anyone step on, sit on or lie on [Tr. 150] the lawn of the court house that is anyone that was a part of this civil rights demonstration.

A. No sir. As a matter of fact, we had been carefully asked that we maintain an orderly picket line and we were instructed also never to speak back in answer or to retort to anything that was said to us or if we were to be struck or anything like this we were to never—

By Mr. Wells: The Court please, we object to that.

By Judge Rives: Yes sir, objection sustained, they were asked by some group the instructions that would be hearsay, gentlemen, but what occurred you can—

By Mr. Smith: (Interrupting) I think his understanding of what his instructions were, Your Honor, would be pertinent and would not be hearsay.

By Judge Cox: I don't think so.

By Judge Rives: No, the objection is sustained.

By Mr. Smith: Very well.

Q. Now was Reverend Vaux, V-a-u-x, there with you when arrested on that day?

[Tr. 151] A. Yes, he was.

Q. Was Reverend Mehl there and arrested with you on that day?

A. Yes, sir, he was.

Q. Was Reverend Cameron there with you and arrested on that day?

A. Yes, he was.

By Mr. Smith: I tender the witness.

By Judge Rives: On the day that you were arrested approximately how many minutes or how long had you picketed before you were arrested?

By the Witness: It didn't seem long sir, it seemed to be about five minutes perhaps.

By Judge Rives: About five minutes. Was this on a Friday that you were arrested or what day of the week was it?

By the Witness: As I remember it was Friday because Thursday they read the law and it was the next day.

By Judge Rives: Thursday afternoon they had given you this law?

[Tr. 152] By the Witness: Yes, that's right.

By Judge Rives: Prior to the arrest?

By the Witness: Yes.

By Judge Rives: How many days had you picketed before your arrest?

By the Witness: Myself?

By Judge Rives: Yes.

By the Witness: I had picketed since Monday.

By Judge Rives: Monday, Tuesday, Wednesday, Thursday?

By the Witness: That's right.

By Judge Rives: And then on Friday morning you were—

By the Witness: (Interrupting) That's right.

By Judge Coleman: To the best of your recollection what did the law say that they read to you? I realize that under the rules of evidence the law itself is the best evidence [Tr. 153] but I want to know what part of it you remember that they read to you.

By the Witness: The only thing that seemed to stay with us—

By Judge Coleman: I am not talking about us, I am talking about you personally.

By the Witness: Personally it was the entrance, blocking the entrance or exit to this building.

By Judge Coleman: So you understood when you went back up the next morning that if you did block the entrance or exit to the court house that you would be violating the

statute which had been read to you the previous evening or previous afternoon?

By the Witness: My understanding was if we blocked the entrance made it impossible for people to enter this building to carry on business as usual that we would then be violating this law. My opinion was that we couldn't possibly be blocking because of all the entrances to this building.

By Judge Coleman: At this time you were a resident of [Tr. 154] the State of Pennsylvania?

By the Witness: That's right.

By Judge Coleman: So you wouldn't be presumed to know the laws of the State of Mississippi. Did you ask them to give you a copy of the law or did anyone else take it to study to familiarize yourself with what it said or what it would prohibit?

By the Witness: Sir, uh our understanding of course—

By Judge Coleman: I am asking you the question did you ask for a copy of the law and take it with you and study it on the night before you went back prior to the fatal day?

By the Witness: No. We had a lawyer uh I believe his name is Mr. Pratt who was studying this law and counseling us concerning the implications of this law in our particular case and I believe he was doing the same for those men in Greenwood and we asked for his counsel and his interpretation of the law. In other words we sought a lawyer's counsel as part of our caucusing about what we would do.

[Tr. 155] By Judge Coleman: On the night before you went back up and were arrested did Mr. Pratt counsel you?

By the Witness: Yes, we called him long distance.

By Judge Coleman: Did you personally talk to him?

By the Witness: No, I didn't.

By Judge Coleman: But you were advised by others?

By the Witness: That's right. We had one man who called and he shared with us what the conclusion of Mr. Pratt was concerning the implications of this law with regard to our particular situation.

By Judge Coleman: So in the light of all this you and your associates did deliberately go back up to the courthouse to picket?

By the Witness: Yes, we went up to picket.

By Judge Coleman: You did it deliberately and intentionally?

By the Witness: As we had done, yes.

[Tr. 156] By Judge Cox: You understand that in picketing and if you did picket in a manner to interfere with, not to make it impossible to enter, but to interfere with the entrance to the building that you would be violating this law did you?

By the Witness: I didn't understand that to be the implication that any interference would be understood as a violation, no. I was given to understand that if we blocked.

By Judge Cox: Did you read the law to say that if you obstructed or interfered with the free ingress and egress?

By the Witness: Yes, free.

By Judge Cox: You understand that don't you?

By the Witness: Yes, free ingress, right, that's right.

Cross-examination.

By Mr. Wells:

Q. Reverend Brown, pardon me, are you an ordained minister sir?

A. Yes sir.

Q. Now I believe you said that you came to Hattiesburg [Tr. 157] on Monday?

A. That's right, yes sir.

Q. Would that have been on April 6th? I have a 1964 calendar here sir?

A. I am not sure of the date. I do remember it was raining the day I came to Hattiesburg, so I am not sure what the date was.

Q. May I try to assist him if the Court please? The arrest was on April the 10th?

A. Yes, that we were arrested.

Q. That you were arrested which was Friday?

A. Right.

Q. Is the Monday before that Friday your best recollection of when you came?

A. That's right.

Q. And you engaged in some picketing on the 6th?

A. Uh.

Q. Just your best judgment?

A. Yes, I am trying to recall because I came in in the early afternoon uh.

Q. In any event—

A. (Interrupting) I am not sure, it was possibly the 7th, at least the 7th.

Q. And the 8th?

A. The 8th and the 9th, right, Monday was my date of [Tr. 158] arrival.

Q. Yes sir. Now the first time that you joined in the picketing of the court house I understand there was some, what, how many of you 8 or 10?

A. I believe that's right, yes sir.

Q. Around 8 or 10 and you were walking well enough spaced not to interfere were you not. In other words, you weren't right together but you were separated to some extent were you not?

A. Sir, people couldn't ever get to our picket line because of the ropes and wooden barriers.

Q. There was some ropes and wooden barriers and you had been instructed by the COFO headquarters to stay within those bounds?

A. Stay inside them.

Q. Yes sir and there were just a few of you, is that right?

A. That's right.

Q. And you were not molested in anyway?

A. That's correct.

Q. And the same back on Wednesday the 8th?

A. Right.

Q. You were not?

A. Never molested, that's right.

Q. Now on Thursday, the 9th, there was a larger crowd [Tr. 159] there was there not?

A. No sir, that was a typical picket line, other words that day we had.

Q. Well, I understand the typical but how many would you say were there on the 9th, weren't there more than had been from time to time?

A. My recollection if there were more maybe five more. I don't recall that there were many more.

Q. Well, perhaps about 15?

A. We had trouble always getting people in the afternoon, possibly 15.

Q. Well, I say on the 9th there was probably as many as 15?

A. Yes sir.

Q. Now that afternoon on the 9th when you were there and rather than Mr. Dukes, Mr. Morgan, a Deputy Sheriff, was there with Mr. Dukes and some officers and it was explained to you there was it not that a law had been passed which prohibited people from unreasonably interfering with or partially blocking entrances to the court house were there not?

A. Well, the word unreasonably or partially was never mentioned.

Q. Or was it told you that you could not obstruct or interfere with free access—

[Tr. 160] A. (Interrupting) Yes.

Q. (Continuing) to the entrances to the court house?

A. The entrances, that's correct, yes sir.

Q. And Mr. Morgan said to you people there then that he did not want to arrest you but you would not be permitted to march in that large a groups?

A. No sir.

Q. At that place did he not?

A. No sir, he never mentioned larger groups. That was never mentioned to my remembrance.

Q. But he did advise you that there was a law that you were violating if you obstructed or interfered with the entrances to the court house?

A. Yes sir, and my immediate image was the entrance to the court house.

Q. That was your image but that's what it was explained to you?

A. Yes sir.

Q. And then you were asked to disband the organization that you had then?

A. Yes sir.

Q. Now the next morning, Friday morning some 40 odd of you came to the court house didn't you?

A. Well, I don't I'm not sure of the number.

Q. Don't you know as a matter of fact, Reverend, that [Tr. 161] actually when the arrests were made on the morning of the 10th that 37 people were arrested?

A. I don't recall that, no.

Q. You are not prepared to say that it was?

A. I don't know.

Q. You don't know that?

A. I am not sure of the number.

Q. But that was the largest group that had been there since you had been in Hattiesburg was it not?

A. Yes.

By Mr. Wells: Now, if the Court please, may I get up to examine him, it's going to be necessary.

By Judge Cox: No, let the Marshal handle it for you and you can ask him questions about it. I think that's the more orderly procedure. Then you will speak out distinctly enough to make a record so that whoever is reading the record will know what you are talking about.

By Mr. Wells: It's going to be necessary, if Your Honor please, with that drawing that he has produced or prepared I want to show him a picture that depicts that same thing [Tr. 162] and it's a little bit difficult to do it from this distance if the Court please.

Q. Now, Reverend, I show you first this drawing which you made which has been identified as Exhibit P-3 to your evidence which depicts your drawing of the front part of the court house and I am pointing now here to the area which you described and on which is written picketline?

A. Yes sir.

Q. Do you recognize the part of the court house depicted in that picture?

By Judge Rives: You are showing him a picture which has not yet been introduced?

By Mr. Wells: Yes sir.

A. Introduced?

Q. This picture to aid you is taken from this spot here?

A. Right here.

Q. Looks into——

A. Uh huh, this spot here.

Q. Yes sir.

A. Is this a wall here sir?

By Judge Cox: I suggest putting in something like that [Tr. 163] by somebody who is more familiar with it than this witness seems to be.

By Mr. Wells: My purpose, if Your Honor please, is to cross examine him with this. I want to cross examine him on something, that's my purpose.

By Judge Coleman: It seems to me with the permission of the Presiding Judge here that you could recall him for further cross examination after you have identified your picture.

By Mr. Wells: I will be happy to do that.

By Judge Rives: Is that picture already in evidence?

By Mr. Wells: No sir, it's not.

By Judge Rives: That's not a picture that was introduced by affidavit?

By Mr. Wells: No sir. We are going to introduce it. If I could have him identify it I would but if I may cross examine him about it later if the Court please.

Q. Now I again refer, Reverend, to Exhibit P-3?

A. Yes sir.

[Tr. 164] Q. To your evidence and I believe you placed here A on a door?

A. Right.

Q. Do you know what that was the entrance to?

A. No sir.

Q. Do you know it was the only entrance to the Home Demonstration Agent's office in the Court House?

A. No sir.

Q. You did not know that?

A. No.

Q. But it was an entrance there was it not?

A. Yes sir.

Q. Now right to the left of that which is not shown by your drawing under there is an entrance going into the County Court Room is it not?

A. Yes, seemed to me this was fairly open.

Q. So your picket line was going around this area which you have designated?

A. Yes sir.

Q. Right in front of this entrance to the Home Demonstration Agent's office and also in front of the entrance to the County Court Room wasn't it?

A. Well, you see we kept pretty close to this garden area where the people actually would come along this walk past

[Tr. 165] this area right here and right into the door down the steps and turn that corner.

Q. Reverend, this walk way that you were walking is not even wide enough for two people to go abreast on it is it?

A. Yes, I believe it is. As I recall we had people to come up here and enter the building, yes sir, I believe it was.

Q. I show you another picture which was handed to you by Mr. Smith but which you said you identified as being in the picket area but you couldn't recall when it was taken?

A. Yes sir.

Q. And that's the walk right here which is shown there?

A. Yes.

Q. And that little walk way is not more than 2½ feet wide is it?

A. I am not sure, I don't remember exactly how wide that would be exact footage.

Q. But the line you were taking was right in front of this door here into the Home Demonstration Agent wasn't it?

A. No, not in front in that sense.

Q. All right, well, I mean right close to it and also past the entrance to the County Court Room?

A. You mean in the sense to this corner?

[Tr. 166] Q. Yes sir, the entrance to the County Court Room?

A. Uh well I uh we if you mean the picket line would be such that no one could get up that—

Q. (Interrupting) No sir, I am not talking about the stairs, the entrance that goes under that stairs to the ground level of the County Court Room in the Court House, the County Court Room?

A. Oh I see. Well, as I say we stayed close to this garden. We never had any problem there that I know of.

Q. I see and there were some—. Well, I believe you said you did not know how many but you were in a position to say it was not as many as 40 that day?

A. It didn't seem to me that there was that many sir.

Q. I see. Now weren't you told before you were arrested there by the officers asked to disband?

A. On Thursday, yes sir.

Q. I mean even Friday before you were arrested?

A. I think the Sheriff did say I will give you a minute to disband.

Q. All right sir. Now how long were you in jail?

A. I believe I was in jail 4 days.

Q. 4 days?

A. Yes.

Q. How long did you stay in Hattiesburg after you got [Tr. 167] out sir?

A. After I got out of jail?

Q. Yes sir.

A. I stay about six hours I guess.

Q. You were not there so you do not know what happened along day by day?

A. No sir.

Q. You do not know that small groups of pickets continued there for a period of some well as a matter of fact from April the 12th to May the 18th almost daily and were not molested until they came back in great numbers again?

A. I didn't.

Q. You don't know that?

A. I didn't know that.

Q. I see sir.

By Mr. Wells: I have no further questions of this witness at this point.

By Judge Cox: What became of your case?

By the Witness: I believe it's still bending. My case?

By Judge Cox: Yes sir.

[Tr. 168] By the Witness: I believe its still pending.

By Judge Rives: Has it been removed to the Federal Court?

By the Witness: I believe our lawyer has.

By Judge Coleman: I would like to see if we could get a stipulation on that right now. An affidavit was made against this gentleman for violating this state statute, he was arrested for that or arrested first I suppose and the affidavit made in the County Court and is that prosecution still pending?

By Mr. Smith: I can tell you, Your Honor, because I am involved in it along with Mr. Dukes. I filed a motion to quash in the County Court, Judge Haralsen's Court, I then removed this prosecution along with all of the others involved in this particular case to the United States District Court for the Southern District of Mississippi before Judge Cox. Judge Cox, then Mr. Dukes then answered

my removal petition, filed a motion to remand to the State Court. Judge Cox acting upon these papers remanded to the State Court. I then obtained a stay from the Court of [Tr. 169] Appeals for the Fifth Circuit, appealed the remand order, the case has been briefed, Mr. Dukes has filed his brief, I have filed my brief, it is now before the United States Court of Appeals for the Fifth Circuit, your Court, and we are in the process of a hearing on those removal petitions or asking for a suggestion for summary reversal under the Peacock case. That is the status of the case as it sits now.

By Judge Coleman: In other words the prosecution is yet pending, is that right?

By Mr. Smith: It is yet pending but not in a State Court. It is pending in a Federal Court.

By Judge Coleman: But it was instituted in a State Court?

By Mr. Smith: It was instituted in the County Court for Forrest County.

By Judge Coleman: Well, its been remanded to the State Court if that remand is sustained.

By Mr. Smith: It has been remanded but there is a stay in effect.

[Tr. 170] By Judge Rives: On appeal on the order of remand?

By Mr. Smith: Yes sir, issued by the Fifth Circuit.

By Mr. Wells: May I add to that?

By Judge Coleman: The Supreme Court of the United States had something to say about that this last Monday did they not in the 20 cases from Atlanta, Georgia on remand from the Federal Court?

By Mr. Kinoy: Yes, Judge Coleman, they granted certiorari.

By Mr. Smith: In Rachael.

By Mr. Kinoy: In the Rachael case. Also the Court would be interested in that some of the companion cases involving this anti-picketing statute involving the removals concerned here before the Court have already been considered by the Court of Appeals for the Fifth Circuit and reversed, that is the Carmichael case, there was a summary reversal of the order of remand same cases involved here.

By Judge Rives: Reversal for reconsideration in the light of the—

[Tr. 171] By Mr. Kinoy: (Interrupting) Exactly right and for appropriate I think the remand order the reversal order reads for reconsideration and appropriate factual hearings if required.

By Judge Coleman: That's the point some of these cases, not all of them, are reversed for failure to grant an evidentiary hearing to start with weren't they?

By Mr. Smith: That's true. Now, Your Honor, our office handled both the Peacock case which has now gone to the United States Supreme Court on an application for certiorari and cross application for certiorari and at the same time we have obtained summary reversals of the Carmichael and the Landy McNair versus City of Drew cases by the Fifth Circuit and have filed similar suggestions in all our pending removal cases and I intend to file one in this case?

By Judge Rives: You gentlemen care to make any additions to that?

By Mr. Wells: Adding to that stipulation, if Your Honor please, the motion to quash that counsel spoke of in the County Court raised the same issue in that Court as is [Tr. 172] raised here motion to quash was based on unconstitutionality on its face of this very statute and the unconstitutional application of it in the State Court and if the cases get back to the State Court will be before the State Court for determination.

By Mr. Smith: That was overruled by Judge Haralson, incidentally, in the County Court. I do have a few questions.

By Judge Coleman: Did you perfect any appeal or attempt to perfect any appeal from Judge Haralson's action?

By Mr. Smith: No sir, the, I did not do so because now that the record has been my recollection has been refreshed by Judge Cox telling you that we removed on the 13th of April you can see that I immediately thereafter upon the loss of my motion to quash in the County Court removed to filed this action and as soon as I was able to under the Lefton case of the Fifth Circuit which we then commenced as a mandamus proceeding removed these proceedings to this Court.

By Judge Coleman: But you did not pursue such remedy as the law provides for you in the State Courts.

By Mr. Kinoy: Judge Coleman, of course we—
[Tr. 173] By Judge Coleman: Let him answer my question.

By Mr. Kinoy: Oh, I'm sorry.

By Mr. Smith: No sir, I did not pursue the state proceedings any further. I will say this that I found that I was not going to be able to practice in the State Courts in Hattiesburg because I don't have a Louisiana uh a Mississippi license and I felt that the only way I could then effectively represent these people since I could not find local counsel in Hattiesburg was to remove the cases to the Federal Court and associate Mr. Rosenthal of Jackson.

By Mr. Kinoy: If I might add a comment, Judge Coleman. Of course once the removal petitions were filed and were duly accepted in the Clerk's office in the District Court State Court of course under all of the rules and the cases lost jurisdiction so that even if Mr. Smith had wanted to file notices of appeal in the State Courts he could not as long as the removals under 1443 are pending in the Federal Court its clearly held by this Circuit over and over again that the State Court has no jurisdiction to [Tr. 174] proceed in any way.

By Judge Coleman: But the State Court lost jurisdiction on account of the action which he took.

By Mr. Kinoy: Right, right.

By Judge Coleman: Like the man killed his father and defending on the ground that he was an orphan, he's the man that caused the State Court to lose jurisdiction.

By Mr. Kinoy: Pursuant to a statute of Congress, Judge Coleman.

By Judge Coleman: I understand.

By Mr. Kinoy: Permitted Mr. Smith to do that.

By Judge Coleman: I am thinking about what the Supreme Court of the United States said to us about the applicability here of what is it 2284.

By Mr. Kinoy: I take it we still have the opportunity to discuss that problem with the Court.

By Judge Coleman: Right. I was trying to find out [Tr. 175] what some of the facts were.

By Mr. Kinoy: Certainly sir.

By Mr. Smith:

Q. Reverend Brown, going back to the door marked A on the map or plat?

A. Yes.

Q. Did you ever see anyone use that door during the times that the picket lines were being maintained and you were on them?

A. My memory is vague on that. I can't recall.

Q. You cannot recall specifically. Now when you arrived at the court house on the morning of April the 10th were there any TV cameras there?

A. Uh I'm not sure, the TV newsmobile was there and men with cameras, whether they were going to use it for TV I don't know, seems to me, I don't know.

Q. These were motion picture cameras?

A. Yes.

Q. I mean on tripods. Would you describe them please?

A. I don't recall tripods on the cameras.

Q. Where was this mobile parked.

Q. Right in front of the court house, that's the reason it caught my eye.

Q. Did you see anyone taking pictures of you that [Tr. 176] morning?

A. Uh from the steps of the court house I believe there was some as I recall men taking pictures.

Q. Were there any newspaper reporters there?

A. I don't know, there possibly were. No one asked me any questions.

Q. Did you see any law enforcement officers other than the one that helped you across the street and Sheriff Gray?

A. I don't recall that either. Those two stand out in my mind. I don't recall others.

By Mr. Smith: Very good. That's all. Thank you.

By Mr. Wells: Just one question, if the Court please.

Q. Reverend Brown, on the night of the 9th, Thursday night, prior to going back Friday morning, the 10th, was Robert Moses in Hattiesburg?

A. I don't know.

Q. Do you know him?

A. No.

Q. He was the project director at that time of COFO. Did you come in contact with him?

A. No sir.

Q. Counsel asked you about any cameras or moving pictures or television cameras there. If they were there do you know whether they were alerted by COFO as is usually its custom in matters of this kind?

By Mr. Smith: Going to object to that. There has been no basis for this sort of question brought out by direct examination.

By Judge Rives: That would sustain something that's not in evidence, Mr. Wells, sustain the objection.

By Mr. Wells:

Q. Then you do not know who alerted the cameramen to be there?

A. Who alerted the cameramen, I don't even know the cameramen sir.

Q. Well, counsel asked you if there were some TV cameras there and you said you saw some people taking pictures. You don't know who alerted them to be there?

A. I don't know, I don't no. I couldn't know who alerted them to be there if I don't know who took the pictures.

By Mr. Wells: No further questions if Your Honor please.
[Tr. 178] By Judge Coleman: Let me just one further question here.

By the Witness: Yes sir.

By Judge Coleman: Now it's come out since you started testifying that you are a defendant in a prosecution which is still pending which meant that under the law you would not have to take the stand here and testify unless you wanted to. You couldn't be compelled to do that. Did anybody before they put you on the witness stand advise you as to your constitutional rights in that regard and inform you that the testimony that you gave here could possibly be used against you in a later proceeding in this prosecution which is pending against you?

By the Witness: No sir. I knew I had the right not to come but I didn't know the implications of coming or not coming.

By Judge Coleman: Nobody has advised you of that?

By the Witness: That it could be used against me?

By Judge Coleman: In a later trial of the prosecution which is pending against you?

[Tr. 179] By the Witness: No one mentioned that. I did know that I didn't have to come. That's all I know.

By Judge Coleman: Just as one member of the Court I am going to suggest to you gentlemen if you have any other people who are in the same attitude as he is that you advise them of their constitutional rights before you put them on the witness stand.

By Mr. Smith: I certainly will, Your Honor. I am through with this witness.

By Judge Rives: May he be excused?

By Mr. Wells: Just one question in view of Judge Coleman's suggestion, if Your Honor please.

Q. Reverend, is Mr. Smith your attorney?

A. Yes.

Q. Representing you in the criminal charge also?

A. Yes.

Q. Yes sir.

A. His office.

By Judge Rives: May Mr. Brown be excused?

[Tr. 180] By Mr. Wells: As far as I am concerned.

By Judge Coleman: There is some point about you may want to further cross examine him on one of the pictures that was identified.

By Mr. Wells: Yes sir, I would like to. If he will stay if the Court please I want to cross examine him about this picture.

By Judge Rives: You may be excused and go back to the witness room.

By Mr. Smith: Your Honor, could I have five minutes to confer in connection with Justice uh Judge Coleman's suggestion?

By Judge Rives: Court will take a five minute recess.

(Court recessed at 10:26 A.M. for five minutes.)

By Mr. Smith: My next witness is the Reverend Kenneth Vaux, V a u x.

Kenneth Vaux called as a witness for and on behalf of Plaintiffs, was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. You are Reverend Kenneth Vaux?

[Tr. 181] A. Yes sir.

Q. And your home address please?

A. Wausega, Illinois.

Q. Now you were in Hattiesburg on April the 10th, 1964?

A. Yes.

Q. And you were there as a part of the ministers project for the National Council of Churches. Is that not correct?

A. Yes.

Q. And you are acquainted with Mr. Keith, Reverend Keith Brown who was here previously, is that correct?

A. Yes.

Q. When did you arrive in Hattiesburg in 64?

A. I believe we arrived April 1st, April 1st or 2nd, it was Friday.

Q. Now you were arrested on the 10th, is that correct?

A. Yes.

Q. At the same time Brown was arrested?

A. Yes.

Q. Now did you participate in the picket line before the court house during the period between the time you arrived and the time you were put in jail actually?

A. Yes sir.

Q. Now, how many people were on those picket lines with you and how many times were you out there picketing before you were actually arrested?

A. During the week between the time we arrived and the time we were arrested I suppose. I picketed 5 times.

Q. Approximately how many people were there during those 5 times?

A. Oh the numbers varied, sometimes there were as few as 7 or 8 and sometimes there were as many as 15, 18 I would say.

Q. 15 or 18?

A. (No answer.)

Q. Now would you, would you tell us where the location of that picket line was?

A. It was to the west of the court house I believe at the side of the uh at the side of the court house, uh it would be on the uh north, I believe its the north uh northwest corner of the court house uh picketing around a little garden area.

Q. Is it shown on that Exhibit 3, Plaintiff's Exhibit 3 which I have shown to you?

A. Yes.

Q. And would you hold it up and show it to the Court just real quickly where it is and put your finger and show us the perimeter of the picket line?

A. This.

[Tr. 183] By Judge Rives: Reverend, you are circling the little oval spot, little garden spot?

By the Witness: Yes.

By Mr. Smith:

Q. All right now, Reverend Vaux, uh I am going to show you Plaintiff's Exhibit 1 and ask you if you are in picture?

A. Yes sir, toward the third from the back.

Q. Would you turn it slightly and show the Court where you were?

(Witness showed to Court.)

By Mr. Smith:

Q. Now what was on that picket sign that you had on?

A. Uh I don't recall, I can't remember, I think it was a uh Bible quotation that uh I don't recall.

Q. What was the purpose of that picket line?

A. The purpose of the picket line was to lend moral support and visible support to our voter registration program.

Q. Did you have any other purpose than voter registration?

A. Yes, it was a broader purpose of encouraging the negro community to uh to make their uh gestures toward full citizenship in all dimensions but voter registration was [Tr. 184] our primary objective.

Q. Very good. Now did you the way the picket line was set up was it any way blocking the entrance to any door

of that court house?

A. No, sir sir, I don't believe.

Q. Are you familiar with that small door on the lower part there at the point marked A?

A. The small office.

Q. Home Demonstration Agent's office?

A. Yes sir.

Q. Now did the picket line ever block that door?

A. Not to my knowledge.

Q. Were you ever told by anybody either an authority or not an authority that your picket line was blocking that door?

A. No.

Q. Did you ever see it block that door?

A. No sir.

Q. Did you ever see anyone use that door?

A. Yes.

Q. Who?

A. Uh several people using it but I do recall the woman who I believe was the secretary in there coming in one or two mornings and uh she greeted us cordially and she I remember because—

[Tr. 185] By Judge Coleman: Your inquiry was directed to the day of the arrest was it not, Mr. Smith?

By Mr. Smith: Well, I would like, I would like to have—

By Judge Coleman: The statute as I recall from this record became effective on the day before the arrest, there wasn't any statute until Thursday, and what happened Monday, Tuesday and Wednesday is altogether beside the point as I see it.

By Mr. Smith: I would think, Your Honor, that we have been asked by the Supreme Court to review this particular case in view of the guidelines set down in *Dumbrosky versus Fista* and in that particular case the Court said in effect that they were interested in the circumstances surrounding the arrests, whether or not persons were engaged in civil rights activity would be pertinent and that also the surrounding character of the activity would be of interest and help to the Court. Now that was why—

By Judge Coleman: *Dumbrosky* was a case of threatened prosecution and here we have a case of actual prosecution.

[Tr. 186] By Mr. Smith: Yes, however, I am simply going by the Supreme Court's mandate in the per curiam in which they cited *Dumbrosky*.

By Judge Coleman: Go ahead.

By Judge Cox: I agree with Judge Coleman we ought to limit this thing and have some confines to it and that should not anti-date the statute. It wasn't against the law then and that's what you are complaining of, the ground of your action is the invalidity or not of this state statute.

By Mr. Smith: Judge, I am going to show that this arrest was not for the purpose that it was intended, that it was not an arrest because these people were blocking anything, it was an arrest because they were simply picketing in a civil rights demonstration. I am going to also have to show in my proof what their previous activity was, that they could have been arrested under Mississippi statute for simply blocking the sidewalk, they could have been arrested for trespass. I have to develop my proof that way.

[Tr. 187] By Judge Cox: You can shut off the argument. I am willing to go.

By Mr. Smith: All right sir.

Q. You say this lady cordially greeted you on several occasions during the week before you were arrested?

A. Not several. I think twice I can recall the days that I picketed.

Q. Did she seem upset or disturbed that you all were walking there?

A. I didn't uh she didn't say anything to this effect, in fact she greeted us.

Q. I see. Did anybody ever come out and tell you that you better move or break up the picket line?

A. No.

Q. Were you more or less the spokesman for the ministers, Reverend?

A. Yes, most of that particular week.

Q. Now did you talk to Sheriff Gray the day before you were arrested?

A. Yes. Yes.

Q. And tell us about that afternoon just before the day of the arrest?

A. The afternoon uh I believe it was roughly four in the afternoon uh there were a small group were picketing in

this area that had been designated for us to picket and uh [Tr. 188] about four in the afternoon a police car I believe pulled up or or policemen came out of the court house and took down the ropes and the barriers barricades and uh I believe Mr. Gray came out of the side entrance and read the statute to the group that were over at that particular side of the court house and uh then we disbanded but I wasn't there for the I didn't hear the statute because I was at the other side of the line kind of uh but then we disbanded and went back to our quarters.

Q. All right then you all came back the next morning is that right?

A. Yes.

Q. And started to picketing again and then you were arrested?

A. Yes sir.

Q. Now when you got back there the next morning did you see any crowds anywhere?

A. Yes.

Q. Tell us about that?

A. There were large crowds at uh surrounding the court house at every side. On the sidewalks there were uh—

Q. (Interrupting) Show us on that little plat if you [Tr. 189] can?

A. Well, there were across here in front of Sears and Roebuck you could hardly see the front window of the store, there were large numbers of people on the sidewalk there.

Q. That is to the left hand side of that drawing?

A. Yes, I believe that would be east.

Q. No, the top is west as you will see?

A. Yes, I see, well, I have my recognition wrong, yes sir.

Q. Would you hold it so the Court can see it, not necessarily me?

A. To this side there was a crowd, there was a crowd over here on this sidewalk, there were many people on the front steps of the courthouse, these were mainly officials I believe and newsmen and so forth, I don't mean to say there was a general crowd there.

By Judge Rives: You mean on the front steps?

By the Witness: Front steps of the court house. I would say there were 20 or 20 people or so on the front steps.

By Mr. Smith:

Q. How many—

A. (Interrupting) And then were some people back here [Tr. 190] in the parking lot. I believe it's a parking lot back here. I would guess there were several hundred people.

Q. Any of them get arrested?

A. Not to my knowledge.

Q. Any of them told to move on or break up to your knowledge?

A. Not to my knowledge.

Q. Did you see any TV cameras out there?

A. I don't remember TV cameras. I remember movie cameras.

Q. You mean—

A. (Interrupting) I don't know what a TV camera looks like.

Q. Was there a newsmobile out there?

A. Yes, I remember seeing a newsmobile.

Q. Any newspaper men talk to you?

A. Yes.

Q. Who?

A. Several who I cannot identify. One man who was representing Associated Press I believe we presented our statement to.

Q. What did he ask you?

By Mr. Wells: Object to that if the Court please.

[Tr. 191] By Judge Rives: Beg your pardon.

By Mr. Wells: We object to that, if the Court please, about a conversation he had with some newspaper reporter.

By Mr. Smith: We are not trying to prove the authenticity of the remarks but I just want to show that the newspaper reporter asked this man something for a statement.

By Judge Rives: The fact that he asked for it but not the content.

By Mr. Smith: Not as to the truthfulness of the content at all.

Q. Proceed, tell us what he said to you?

By Mr. Wells: That's what I object to if the Court please.

By the Witness: He didn't say anything.

By Mr. Smith: I withdraw the question.

By the Witness: I don't recall what he said.

By Mr. Smith:

Q. Did you give him a statement?

A. Said do you have any statement and I handed him the [Tr. 192] statement. The line was moving quickly into the jail house.

Q. Now had you called the newspapers at all?

A. No.

Q. Do you know of anyone in the COFO unit that had called the newspapers?

A. I don't remember that. The quarters where we were staying were separate from the COFO, they were down the street so I really don't know what—

Q. (Interrupting) You can speak for the ministers project?

A. Yes, and we did make a statement to the papers.

Q. That day?

A. Yes.

Q. But you had not called them ahead of time to tell them that you were coming out there?

A. No, no sir.

By Judge Rives: How did you happen to have the statement prepared, Reverend?

By the Witness: We prepared it the evening before while we were deliberating together the ministers.

By Judge Rives: How did you know that the newspapers [Tr. 193] were going to be there, the press was going to be there?

By the Witness: We had just assumed uh we we knew that there was going to be a uh I personally thought that we would be arrested and I personally thought that this would be a confrontations which seemed in my mind to be mounting during the week.

By Judge Rives: Apparently after the warning the afternoon before?

By the Witness: Yes.

By Judge Rives: Had there been any crowds around the court house during the picketing on any other occasion during that week?

By the Witness: Not nearly to that extent but there were smaller crowds.

By Judge Rives: Go ahead, Mr. Smith.

By Mr. Smith: Thank you sir.

Q. Tell us about the arrest itself the next morning, that is on the morning of the 10th?

A. We assembled shortly after nine o'clock at COFO [Tr. 194] headquarters. We uh lined up two abreast and roughly ten feet apart and walked up on the sidewalk to the Main Street of the town. When we arrived at the Main Street in front of the court house we crossed the street at the cross walk uh we then proceeded to move into single file picketing uh trying to keep roughly uh ten feet between us. We marched around the uh this little quadrangle two and a half times uh on the uh middle of the third cycle the Sheriff and some other officials stood here and just directed our line back to the west of the court house and into the jail.

By Mr. Smith: That's all. I tender the witness.

Cross-examination.

By Mr. Wells:

Q. Reverend, you pronounce your name Vaux is it?

A. Yes sir.

Q. Vaux. Reverend Vaux, I believe you said that you got to Hattiesburg around the 1st of April?

A. I believe that was the date. It was a Friday morning we arrived, 1st or 2nd.

Q. 1st or 2nd of April?

A. Yes sir.

Q. And then you participated in and probably observed [Tr. 195] some daily picketing there up until the day of the arrests did you not?

A. Yes sir.

Q. The groups were rather small weren't they?

A. There was variations. Sometimes they were very small, other times they were——

Q. (Interrupting) Sometimes 7 or 8 people——

By Mr. Smith: (Interrupting) Your Honor, I would sug-

gest that counsel let him finish his question his answer to the question before he asks another one.

By Mr. Wells: I'm sorry.

By the Witness: Generally the line grew larger when uh uh students uh came out of school so in the late afternoon frequently it was a large line and in the morning it was generally very small.

By Mr. Wells:

Q. Morning usually small, sometimes 6 or 7?

A. Yes.

Q. Then sometimes as many as 10 or 12?

A. Yes, sometimes there were probably 18 to 20.

Q. Sometimes?

A. Yes, maybe more, I really don't know.

[Tr. 196] Q. I see and you said that on most all of these occasions you tried to keep yourself spaced about 10 feet apart did you?

A. Equally spaced as much as the space would permit, yes.

Q. And normally that far apart?

A. Yes.

Q. Approximately I mean?

A. Yes sir.

Q. Now on now you were not molested by anybody at all any officer at all until Thursday afternoon, the 9th of April, were you?

A. Yes, we weren't molested.

Q. That's what I say?

A. Even on that day.

Q. That's right and on that afternoon some officers, it was Mr. Morgan a Deputy Sheriff rather than Mr. Gray the Sheriff wasn't it that advised these people that there was a law that prohibited them from obstructing or interfering with any entrances or exits in the court house, is that right sir?

A. I wasn't there sir so I don't know who the person was that advised but we were thus advised.

Q. Thus advised and that was in the afternoon of somewhere around four, little after four?

[Tr. 197] A. Yes.

Q. So you then left the area of the court house and went back to your headquarters?

A. Yes sir.

Q. That night you had a meeting and a discussion about what you would do the next morning didn't you?

A. Yes sir.

Q. I believe some advice was sought from some attorney up at Greenwood about what this law meant, is that right?

A. Yes sir.

Q. And did you understand that it meant that you would be violating the law if you picketed in such a way as to obstruct or interfere with the free entrances and exits at the court house, that was your understanding?

A. Will you rephrase that please sir?

Q. What was your understanding of what that law meant that you got from the attorney that was inquired about, what did you understand that law to prohibit?

A. The phase of the law that we discussed with the attorney was the constitutionality of the law and he assured us that uh uh we were in our constitutional rights to continue to uh.

Q. Did you talk to the attorney?

[Tr. 198] A. Yes, I did sir.

Q. You are the one that talked with him?

A. Yes.

Q. He had read it had he not?

A. I assume he had, yes.

Q. Yes sir. You understood and he understood that the law prohibited picketing in such a way as to obstruct or interfere with the entrances and exits of the court house didn't you?

A. I can't speak for his understanding.

Q. That was yours?

A. Yes, sir.

Q. You were advised then by him that he thought that law was unconstitutional?

A. Uh I wouldn't want to say that. I would want to say that he advised us that we were within our constitutional rights to to picket and the specific law was not uh brought into the discussion, it was just a very brief two or three minute conversation.

Q. Maybe I misunderstood you, Reverend Vaux, and I

want to be perfectly fair with you but I thought I understood you at first to say it was his opinion that the law was not constitutional, I believe that was the statement you made, it was what I understood you to make.

[Tr. 199] A. We didn't in our in our two or three minute conversation we did not specifically refer to the content of the law as such.

Q. Was there anything said about whether you he thought or you thought that law was valid, I will put it that way?

A. This was implied in our conversation.

Q. That it was not valid?

A. I would want to say that we did not discuss the validity of the law. We discussed the uh our *our* right constitutional right to picket.

Q. Notwithstanding the law, is that right?

A. Yes sir.

Q. That's right sir?

A. Yes sir.

Q. You understood what the law was and what it prohibited?

A. Yes.

Q. You discussed whether you had a right to do what you were doing regardless, is that right?

A. Yes sir.

Q. And you made plans to come back the next morning?

A. Yes sir.

Q. So much so that you made a prepared written statement to be given to the press the next morning?

A. Yes sir.

[Tr. 200] Q. Is that right sir?

A. Yes sir.

Q. And when you came——

A. (Interrupting) This statement if I may was not meant specifically for the press. It was just a statement for general consumption.

Q. But it was a written statement?

A. Yes sir.

Q. Then you came back the next morning approximately 40 of you came didn't you?

A. Yes sir.

Q. The largest crowd you had ever had since you had been here wasn't it?

A. Yes sir.

Q. Now did I understand you sir to say that when you started in single file you spaced yourself ten feet apart?

A. Roughly, that was our desire but.

Q. I show you sir a photograph which has been identified as Exhibit P-1 to the evidence of Keith Brown, it has been identified as a picture taken on the 10th just a short while before the arrests were made. Is that the kind of spacing you have reference to sir?

A. What I refer to the 10 feet space I was talking about the our general policy was 10 feet or as much as we could. [Tr. 201] This day it was less than 10 feet.

Q. In other words on this day when approximately 40 of you went up there you were actually just so close together that people couldn't walk between you weren't you?

A. No, it was plenty of room between us, I would say about 8 feet between.

Q. Look at that picture please sir?

A. Yes.

Q. Is it your judgment there is around 8 feet between people there?

A. Roughly 6, I would say about two arms lengths.

Q. Do you know who this is?

A. Yes, he's a clergyman from Connecticut.

Q. That is the third gentleman. Would you say he is how far behind this colored lady that is in front of him?

A. I don't know.

Q. Where are you in that picture sir?

A. Right here.

Q. The third from the end?

A. Yes sir.

Q. How far is the man behind you?

A. He was about 6 feet. I think the man in front of me was about 8 feet in front of me.

Q. And you tell the Court you were spaced that much so [Tr. 202] the picture doesn't represent the true facts does it?

A. Yes, the picture represents the true facts.

Q. All right sir, I show you another picture.

By Judge Cox: For the record if you will identify that, Mr. Wells.

By Mr. Wells: Yes sir, I identified it if the Court please as Exhibit P-1 to the evidence of Keith Brown.

Q. Now I show you another picture which is identified as the Exhibit P-1 to the evidence of Keith Brown and I point here to the three people on the left hand side of that picture. Would you say that they are, how far apart would you say that they are?

A. Looks about one arms length but they are squeezed because that's at the turn. I think this represents them 4 are.

Q. Let's look down this line how far are those people apart?

A. They are quite close there, I would say 4 or 5 feet apart.

Q. And that in your judgment about the distance they are apart?

A. Would you which specific interval? I would say an arms length to 5 feet apart.

[To Mr. Wells] By Judge Coleman: Mr. Wells, let me see the picture please sir.

By Mr. Wells:

Q. The way you people were marching, I am sorry, Judge.

By Judge Cox: I was just telling Bob to handle those exhibits for you.

By Mr. Wells:

Q. Reverend Vaux, do you tell the Court that people marching as those people were standing walking as I am here now wouldn't interfere with or obstruct somebody that was trying to walk through—

By Mr. Rosenthal: (Interrupting) Your Honor, he is asking for a conclusion of the witness.

By Mr. Wells: Yes sir, I am asking for his, he was there at the time if the Court please.

By Judge Rives: Objection overruled.

By the Witness: Yes, I would say that anyone could pass through easily.

By Mr. Wells:

Q. In other words with a line such as shown in that picture moving about like I am moving, about that fast?

[Tr. 204] A. Yes sir.

Q. And that somebody coming along through the other way would have no problem at all walking then in between them?

A. I wouldn't think so.

Q. I am sir.

A. There were two or three body widths between people.

Q. Now the little sidewalk after you got off the main street sidewalk the little sidewalk leading up as shown in this drawing here which is identified as Exhibit P-3 to the evidence of Keith Brown the sidewalk leading up here is just about 3 or 2½ feet wide isn't it?

A. It's a narrow sidewalk, yes, I don't know the distance.

Q. It isn't actually wide enough for two people to comfortably walk along side by side?

A. Oh yes, certainly. I would say give it 3 feet at least. In fact many times we walked two abreast on it.

Q. After you got up into the court yard proper?

A. Yes.

Q. Sir?

A. Yes sir.

Q. Do you, I show you here a picture which has not been [Tr. 205] introduced in evidence, a photo taken by Robert Miller, and I will ask you if you recognize where that area is?

A. That is the walk you are now referring to as you come in front.

Q. From the?

A. North I believe.

Q. From the north?

A. Yes.

Q. And that's a part of the line that you and the people—

A. (Interrupting) Yes sir.

Q. (Continuing) traveled? Now take a look at the walk please sir that they are walking on?

A. Yes sir.

Q. And you say that's wide enough for two people to walk side by side?

A. Oh yes, even three small people could walk.

Q. You do recognize this as being there in that area?

A. Yes.

Q. That you—

A. (Interrupting) The picture is somewhat deceiving because this line of bushes.

Q. That's monkey grass isn't it?

A. I don't know.

[Tr. 206] Q. Border grass?

A. Conceals about half of the sidewalk.

By Mr. Wells: I see. Court please, we—

By Mr. Smith: I will stipulate the picture in with you, Mr. Wells, to help. I didn't put it in before because my witness couldn't say it was taken on the day of the arrests but for the aid of the Court I will stipulate the picture in.

By Mr. Wells: I can advise you and the Court as the affidavit this picture is in evidence formerly as the affidavit of Mr. Miller has shown and that picture was actually taken on the 11th and not the 10th, the next day, Mr. Smith, but it is in that same area.

By Judge Rives: No objection—

By Mr. Smith: No objection.

By Judge Rives: The picture will be admitted in evidence marked Defendant's Exhibit 1.

By Mr. Wells: If the Court please, I was going to intro-
[Tr. 207] duce it as an exhibit to the cross examination of this witness who has identified it.

By Mr. Smith: We can mark it Plaintiff's 4 if it would help because its a series of pictures.

By Judge Rives: Mark it Plaintiff's Exhibit 4.

By Mr. Wells: All right sir.

(Received in evidence and marked Plaintiff's Exhibit 4.)

By Mr. Wells:

Q. Would you say that picture represents the normal spacing of the people who picketed there?

A. No, that's a little closer than normal.

Q. That's a little closer than normal?

A. Yes sir.

Q. I see sir.

By Judge Cox: Does that picture correctly portray the facts as they existed there under the circumstances at the time?

By the Witness: If this was the 11th we were incarcerated at the time so I don't know the specific factors of this.

[Tr. 208] By Mr. Wells: The Court please, this picture was taken the next day, the 11th.

By Judge Cox: I see. All right.

By Mr. Wells:

Q. You spoke in your direct testimony, Reverend, about this lady who was in the Demonstration Agent's office, Home Demonstration office, as having seen her on several days when you were there. Did you see her on Friday, the 10th?

A. No, I didn't.

Q. Don't you know as a matter of fact that she tried to come out of her office to go around and go up in the County Agent's office that morning and could not get out?

A. No sir, I don't.

Q. You do not know that and couldn't get through because of that crowd that you had, is that right?

A. No sir.

Q. You do not know that?

A. No sir. I doubt it in fact.

By Mr. Wells: Court please, I have no further questions of this witness.

[Tr. 209] By Judge Rives: Anything further?

By Mr. Smith: No further questions.

By Judge Coleman: Just a minute. May I see the picture just a minute. Reverend Vaux, of what religious denomination are you *you* a member?

By the Witness: United Presbyterian Church sir.

By Judge Coleman: I understand you to say that all of this activity was for the sole and exclusive purpose of encouraging registration and in connection with the voter registration drive?

By the Witness: I would I refer to your broader purpose of standing along with our citizens who we felt were in need and had let us know of this need and asked us to come to their aid.

By Judge Coleman: What need do you have reference to?

By the Witness: The general need of uh uh uh being uh withheld from full citizenship in many dimensions of which many proceed from the basic right of voter registration.

[Tr. 210] By Judge Coleman: Well, coming right down to the point in issue were you there for the purpose of assisting people in obtaining the right to vote or were you there for other purposes as well?

By the Witness: That was our central purpose.

By Judge Coleman: Again I will ask you to tell us what the other purposes were?

By the Witness: Well, this was our purpose but it grew out of a larger conviction sir if I may make this distinction. Our larger distinction our larger purpose was a humanitarian purpose to uh witness with these people because of our faith to their right to full citizenship and uh our specific this made itself known in the specific purpose of voter registration since so many of the facets of citizenship rest on this central uh aspect.

By Judge Coleman: But you did have that larger purpose?

By the Witness: Yes sir.

[Tr. 211] By Judge Coleman: Now do you believe in the commonly accepted ideas of the separation of church and state?

By the Witness: Yes sir, I think I.

By Judge Coleman: I wanted to ask you if your purpose was voter registration which is purely a governmental matter I was interested to know why you have various and sundry religious sentiments stated and expressed here on these placards, for example, I note that one of the placards here said "Where the spirit of the Lord is there is freedom".

By the Witness: Yes.

By Judge Coleman: I would be interested to know if you believe in the separation of church and state and if your purposes here were altogether governmental why you brought in these religious facets?

By the Witness: Well, I wouldn't make the distinction of church and state to this to this extent I believe that uh uh civil rights the area of human rights uh move very close

and have move very close to moral rights and have moral implications and uh.

[Tr. 212] By Judge Coleman: Well, that's what I am trying to find out what you were doing had moral implications as well as any reference to rights guaranteed as a matter of government by the Constitution of the United States?

By the Witness: I certainly have to admit this.

By Judge Coleman: So your mission there was both moral and constitutional.

By the Witness: I wouldn't want to say both and. I would say one because of the other, one proceeding from the other more basic spiritual and moral concern.

By Judge Coleman: The common practice in drives and efforts of this kind to impose religious considerations as well as constitutional considerations is it not?

By the Witness: Yes sir.

By Judge Coleman: Thank you.

By Judge Cox: You didn't have any more fertile fields any closer than Hattiesburg, Mississippi to you?

[Tr. 213] By the Witness: Fields are just as fertile in my home and I admitted this even in our statement. I do not see the racial problem as a sectional problem. My efforts have been involved and costly in my home city, in fact so costly that this particular action meant my dismissal from my church where I was and intimidation to my wife who was just expecting her baby when we were in prison when we were in jail so I don't see this as a sectional problem.

By Judge Cox: Was she in jail too.

By the Witness: No, she was at home.

By Judge Cox: You said we.

By the Witness: The group I was referring to.

By Judge Coleman: Have you sought any legal redress in any of the Courts of the United States or elsewhere for what happened to you in your own State of Illinois?

By the Witness: We were in Pittsburgh at the time sir.

[Tr. 214] By Judge Coleman: You were a resident of Pittsburgh at the time this occurred?

By the Witness: Yes.

By Judge Coleman: And you stated in your testimony that you lived in Wausega, Illinois now but you also lived in Pittsburgh along with Reverend Keith Brown at the time you all made your journey down to Hattiesburg?

By the Witness: Yes sir.

By Judge Coleman: Thank you.

By Judge Cox: Thank you sir.

(Witness excused.)

By Mr. Smith: Reverend John Mehl.

John Mehl called as a witness for and on behalf of Plaintiff, was sworn and testified as follows:

By Judge Rives: Mr. Smith, for the record you might let these witnesses indicate what denomination they belong to and whether they are ordained ministers and how long they have been practicing ministry and I think for the record [Tr. 215] since this might possibly reach the Supreme Court you might let them indicate their race also.

By Mr. Smith: Yes, Your Honor. I was trying to expedite, that's why I didn't ask all those questions but I will do that in the future.

Q. Your name please?

A. John Mehl.

Q. And your present residence?

A. Pittsburgh, Pennsylvania.

Q. And you were a resident of Pittsburgh on April the 10th, 1964?

A. I was.

Q. You are an ordained minister.

A. Yes sir.

Q. And you are of the caucasian race?

A. Yes.

Q. And what denomination please?

A. United Presbyterian Church of the United States of America.

Q. How long have you been so ordained?

A. Three years.

Q. You are married.

A. Yes.

Q. And have a family?

[Tr. 216] A. No. Expecting a baby in March.

Q. I see. Now, Reverend, you were with the ministers project in Hattiesburg for the National Council of Churches of Christ in April of 1964 were you not?

A. Yes sir.

Q. You had come down from Pittsburgh with Reverend Vaux and Reverend Keith Brown?

A. Yes sir.

Q. Now were what would you please tell the Court in brief terms the purpose for your coming down as far as you know?

A. My basic purpose was to encourage the negro population in the voter registration drive. We were asked to come by the local governing body of our church because they had received an appeal from the National Council of Churches and the appeal had come from the COFO people down in Hattiesburg.

Q. What was the first thing that you did when you reached Hattiesburg?

A. We went to the ministers project headquarters.

Q. And did you meet Reverend John Earl Cameron there?

A. We did that afternoon.

Q. Did you then participate in any picketing at the court house in Forrest or Forrest County Court House?

A. The next day I did which was a Saturday.

[Tr. 217] Q. All right did you picket daily until you were arrested on the 10th?

A. I was in town a week and I picketed I would say four days.

Q. How many people would picket with you when you picketed?

A. Between 8 and uh 12 13.

Q. Now were you ever arrested or molested before the 10th of April?

A. Never arrested, never molested in any way.

Q. Were the picketers vocal, did they make any noise as they picketed?

A. The only noise we made was an occasional comment to one another in normal conversation.

Q. I see. Did you receive any complaint from anyone that you were blocking entrances or exits to the court house there at the court house square?

A. No, none at all.

Q. Were you aware of that little office that has an entrance which is shown on your plat marked A which is the Home Demonstration Agent's office here?

A. Yes, I was.

Q. Did your picket line block that entrance?

A. No, it did not.

Q. Why not? Tell us how it related to the entrance?

[Tr. 218] A. Our picket line only occupied part of the sidewalk, the part of the sidewalk farthest removed from the doorway and during the time that I was on the picket line I can remember at least three individuals who had easy access to that door who walked by me on the way to the business in that particular office.

Q. I see. Did you ever see the lady that occupied that office go — and out the door?

A. No.

Q. Did you ever see people walking on the sidewalks that the pickets were walking on at the same time that is people who were not pickets?

A. Yes.

Q. Women and children ever?

A. I noticed adults only as far as I can remember.

Q. I see. Now that small characterized by counsel narrow sidewalk running on your plat from point A to the north street here have you ever seen that sidewalk shared by pickets as well as persons doing business at the court house?

A. Definitely.

Q. Was there ever any complaint about the use by the pickets of that particular sidewalk?

A. None whatsoever came to me.

Q. Did Sheriff Gray or anyone that you know an authority there in Forrest County ever talk to any of the other pickets that you know of or did you ever witness such a discussion?

A. I did not.

Q. Complaining of that sidewalk?

A. No sir.

Q. Complaining of any of the action of the pickets?

A. Not to my knowledge.

Q. Now did they have a barricade there which separated the pickets from the broad expanse of the sidewalk that leads up to the main steps of the court house?

A. Yes sir.

Q. Now how long did those barricades stay erected?

A. They were erected when I arrived in town and they were removed they were not in place the day I was arrested.

Q. Did you see them removed the afternoon before?

A. No, I did not. I did not happen to be on the picket line that day.

Q. I see. Did you have any indication that you were going to be arrested the day you were arrested?

A. Yes.

Q. Tell us how you came to that conclusion and when?

A. The day before the arrest I was in New Orleans with a friend of mine from Pittsburgh seeing his grandmother [Tr. 220] and we arrived back in Hattiesburg at about ten p.m. that evening and the men whom we had been working with all week had discussed the new law that had been passed by Mississippi Legislature and the incident where they had been asked to disband their picketing and threatened if they did not they would be arrested on Thursday which would be the 9th and when we arrived back in town they told us of this incident and told us that we would have to decide for ourselves what to do on this but it was a very good likelihood on the evidence of what Sheriff Gray had told them that if there was picketing the following day that we would be arrested so it was on the basis of what the Sheriff had said to the pickets on Thursday, the 9th, that I had an indication that we would perhaps be arrested on the 10th.

Q. I see. Did you participate then in the statement to be presented if you were arrested?

A. Yes, I did.

Q. And did anyone there notify the newspapers to come out and watch the arrest or anything like that?

A. No sir.

Q. Now when you got back I take it you then decided to picket the next morning?

A. Yes, we deliberated late that night and decided to [Tr. 221] picket.

Q. And when you walked out there the next morning what did you see?

A. Well, when we arrived on the street in front of the court house there were the first thing I noticed was a red car belonging to one of the news media that was parked in front of the court house and there was a large crowd of

people on the court house steps, crowds had gathered on either side of the street across from the court house by the Burns Building store.

Q. Any of those people arrested by the police as far as you could tell?

A. No.

Q. Was Sheriff Gray there?

A. Yes.

Q. Could he see those crowds?

A. Very definitely.

Q. Was Mr. Stokes there?

A. I'm not certain. If all I can remember Sheriff Gray because he was wearing a light tan jacket.

Q. Very good. Go ahead and tell us about what else you saw?

A. Well, there was a normal flow of traffic and besides the crowds the picketing was done, handbills were not [Tr. 222] there and we waited to cross the street until the policeman had halted traffic as he did for all pedestrians and we crossed with other pedestrians and then began to march in the area previously designated for picketing in a very orderly fashion we marched in this area.

Q. Now show the Court if you would please on that little plot which we have marked for identification Plaintiff 3 where those crowds that you have described were gathered just turn it so that the Court can see it and point with your finger air?

A. Right here this is the Burns store over here and then it was a large crowd, it was a car here and there was a large crowd here and down along here.

Q. Where was Sheriff Gray?

A. As I remember on the steps of the court house.

Q. How many people were up there with him?

A. I would say 20 or 25.

Q. Could you get in the court house through that crowd of people?

A. You would have had to either push your way in or caused yourself a number of times.

Q. Any of those people arrested by the Sheriff?

A. Not to my knowledge.

[Tr. 223] By Mr. Smith: That's all.

By Judge Cline: What time of day are we talking about, Richmond?

By the Witness: I believe we arrived at the court house at 9:30.

By Judge Cline: In answering those questions of course I don't believe the time of day was fixed, the date was, not time of day, what time was that?

By the Witness: 9:30 approximately.

By Judge Rives: What time was you arrested?

By the Witness: I believe we couldn't have been on the scene more than about 7 or 8 minutes. Actually we made I think two and a half to three revolutions around this small square had here.

By Judge Rives: Were you warned to disperse or what warning was given to you before you were arrested?

By the Witness: There was no warning given sir.

By Judge Rives: Describe the circumstances of the actual arrest?

[Tr. 224] By the Witness: Well, as we were walking around the uh court yard I guess you would call it in a very quiet and orderly fashion Mr. Gray came over and uh split the picket line and said to those who were on his left follow me.

By Judge Rives: Had he told you before that that you were obstructing the entrance to the court house or interfering in any way with the passage of people?

By the Witness: No, he hadn't and then the picket line followed him when he said follow me we began to follow him and he took us immediately into the jail which is behind the court house.

By Judge Rives: How long did you remain in jail?

By the Witness: Four and a half days.

By Judge Rives: Do you know what has become of your case?

By the Witness: Yes sir.

By Judge Rives: What has become of it?

[Tr. 225] By the Witness: Well, sir uh it's uh it had been I appeared here in July of 64 again and uh at that time I believe two of you men were here and a third District Judge and at that time it was a hearing on an injunction to get the Federal Courts to prohibit this kind of the kind of use of the state law—

By Judge Rives: No, I mean what has become of the

criminal case, the case against you when you were arrested, is it still pending, have you been tried?

By the Witness: No, I have not been tried and its still pending I suppose.

By Judge Rives: Do you know whether it's in the State Court or in the Federal Court?

By the Witness: It's being held up right now to my knowledge until some decision is made here.

By Judge Rives: Until the decision by the Federal Court of Appeals?

By the Witness: This particular court.

[Tr. 226] By Judge Rives: I see. All right. That's your understanding?

By the Witness: Yes.

By Judge Rives: I see.

By Judge Coleman: Reverend Mehl, was this the first time you were ever bodily within the State of Mississippi?

By the Witness: Yes sir.

By Judge Coleman: Did you come down as a citizen of the United States or as a minister of the gospel?

By the Witness: Both sir.

By Judge Coleman: Came as both. Would it be fair to say that you would have been here if you were not a minister?

By the Witness: I believe so.

By Judge Coleman: You think you would have come in any event?

By the Witness: I believe so.

[Tr. 227] By Judge Coleman: And you would have heard the call even though—

By the Witness: (Interrupting) We were requested by our denominations to recruit laymen to come with us and uh were unable in the conversation with them to do and too wanted to know first hand before we would ask someone else to come with us what they would be doing.

By Judge Coleman: Nobody came down from Pittsburgh but ministers of the gospel on this particular occasion?

By the Witness: On this particular occasion no.

By Judge Coleman: And on this trip?

By the Witness: Right, yes sir.

By Judge Coleman: Now on this marching that you were doing around this circle and so forth did you understand

at the time that you were on the property of the Forrest County Court House?

By the Witness: Yes sir.

By Judge Coleman: That you were on the public grounds [Tr. 228] of the court house in Forrest County?

By the Witness: I did.

By Judge Coleman: And you, what were you picketing for?

By the Witness: The basic reason was to encourage the negroes to register to vote, rather than protesting anything we were primarily encouraging them to come to the court house to fill out the proper forms and to take the test, registration test.

By Judge Coleman: All right now you say that was the basic reason. What were your other reasons?

By the Witness: This was the only reason. I tried to zero in on this, this is the only other reason, this is the only reason I can think of.

By Judge Coleman: That was the only reason you had?

By the Witness: Right.

By Judge Coleman: And since you were dealing with an entirely secular matter could you advise us why you carried [Tr. 229] any religious signs in your procession invoking various and sundry religious sentiments and quotations from the Bible and things of that kind?

By the Witness: I myself did not carry any particular religious signs but for myself this is a-very this is a moral issue and primarily a moral issue rather than a political issue and I believe that wherever men are struggling to maintain human dignity and to achieve human dignity there the Church of Jesus Christ has got to be.

By Judge Coleman: You say this was primarily a religious matter instead of a constitutional matter?

By the Witness: A moral matter.

By Judge Coleman: Or a moral matter?

By the Witness: I believe the constitution is concerned with such human dignity and morality as well.

By Judge Coleman: Would you enlighten me about how you separate morality from religion?

[Tr. 230] By the Witness: I don't separate them.

By Judge Coleman: Would you say they are synonymous in the large sense of the word?

By the Witness: Yes sir.

By Judge Coleman: In the large sense of the word?

By the Witness: Yes sir.

By Judge Coleman: Would you contend that you have a right under the Constitution of the United States to go upon public property belonging to all the taxpayers for the purpose of fostering religious ideas outside of a regular dedicated church?

By the Witness: I would not, however I believe that this religious idea of the dignity the idea of the dignity of a man is embodied in our constitution as well as in the basic religion of our country and therefore these two coincide at this point and I was not encouraging anyone except my particular church or religious affiliation.

[Tr. 231] By Judge Coleman: Well, it's a matter of interest I concede everything you say about the Constitution of the United States and I think anyone else would be compelled to do so but conceding that what was the necessity or the appropriateness of carrying religious banners in this picketing?

By the Witness: I think primarily to draw attention to the fact that the discrimination against negroes registrants for voting is a moral issue and therefore concerns everyone as a human being and also as a child of God.

By Judge Coleman: You bring me right back where you left me. I am trying to find out if this is a constitutional issue we are trying here or a moral issue?

By the Witness: I believe its both sir.

By Judge Coleman: I believe that's all.

Cross-examination.

By Mr. Wells:

Q. Reverend Mehl, I believe you say you got here to Hattiesburg at the same time that or did you say that you got here at the same time that Rev. Vaux did?

[Tr. 232] A. Yes sir.

Q. That was around the first of April, first or second of April?

A. Yes sir.

Q. And from that time on until you went down to New

Orleans which I believe was the 9th, Thursday, the 9th, is that right?

A. Yes sir.

Q. You from time to time joined with others and did some picketing there around the court house?

A. That is correct.

Q. And as I understood you to say the number of people normally picketing in those groups was what six or eight or ten?

A. There would sometimes be as many as thirteen, fourteen depending on the day and—

Q. (Interrupting) Anywhere from about 6 to 13 or 14?

A. Yes sir, usually at least 6 or more.

Q. I see and you when you were picketing there you were walking pretty well spaced some 8 or 10 feet apart weren't you?

A. Yes sir. We tried to space ourselves according to the number there.

Q. I see, to try to cover the entire area, I mean a large area?

[Tr. 233] A. Yes sir, and there was always at least 6 to 8 feet.

Q. I see.

A. Or usually.

Q. Now during that period of time you saw people come in and go out of the entrance to the Home Demonstration Agent's office didn't you?

A. Yes sir, I did.

Q. You were not there Thursday?

A. No sir.

Q. When the group was advised by some of the officers that they would not be allowed to picket in such way as to obstruct entrances to the court house you were not there then?

A. I was not there.

Q. You came in back into town or that is to Hattiesburg on Thursday night?

A. Yes sir.

Q. And there was a meeting of your group and others Thursday night, is that right?

A. Yes sir.

Q. And I believe that Reverend Vaux contacted and talked with an attorney about this law that had been passed?

A. I know that someone in our group talked to the attorney.

Q. I see, and the group decided they would come back [Tr. 234] the next morning?

A. It was left to each individual to decide for himself.

Q. I understand that but there was a decision after each individual did decide to come back the next morning?

A. Yes sir.

Q. And a statement was prepared by the ministers there to be used in the event you were arrested?

A. Yes sir.

Q. A prepared statement and so Friday morning the largest group that had gathered together since you had been here got together and went up to the court house didn't they?

A. Yes sir.

Q. Approximately around 40 wasn't it?

A. I remember that there were 28 arrested.

Q. Isn't it a matter of fact sir that there were 37 arrested that day?

A. The first in the group in which I was arrested I believe there were 28 arrested.

Q. Were there two groups arrested that day?

A. To my knowledge there were. I of course was in jail after the first arrest.

Q. But the arrests were made just almost simultaneously?

A. No sir, not to my knowledge they were not.

[Tr. 235] Q. Is that right. But there were about 40 in the group that were there?

A. Sir, I think everyone was taken to jail and I know that there were 28, that's as far as I can tell you.

Q. I see and when you started marching on this day did you see whether or not the Home Demonstration Agent Mrs. Burkett tried to come out of her office and tried to get up to the front and whether she could get there or not?

A. I did not. I saw no one that morning, I was there 7 or 8 minutes and I saw no one going into that office.

Q. I see. Were you walking rather closely together that day?

A. I think the photographs will show that we were probably three feet to four feet apart.

Q. I show you a photograph which has been identified as P-1 to the evidence of Keith Brown, its been identified as being a photograph taken shortly prior to the arrest on April the 10th and ask you if that shows the group that was marching or picketing there at that time?

A. It does sir.

Q. Are you in that photograph sir?

A. This may be my right ear right here. Now I am not [Tr. 236] positive that that is me but I was in the group that day.

Q. You were in the group that day?

A. I was sir.

Q. And did you say that you are from three to four feet apart there?

A. Yes, I did.

Q. Now you were marching steadily that is on the move weren't you?

A. Slow.

Q. I say slow like this. Do you tell the Court that marching as close together as you were as shown in that photograph that there would have been no problem for anybody who wanted to get through that line to pass through?

A. Yes sir.

Q. No problem at all?

A. No problem at all, definitely no problem.

Q. It wouldn't be interfering at all?

A. No sir, and if more than one person had wished to pass through at one time we up it still would not have been a problem because we were quite aware of when folks were walking near the picket line on previous days we were always quite aware of when they were there and very courteous to them and never in any way blocked anyone from [Tr. 237] any of the entrances to the court house.

Q. Did you obstruct those entrances in anyway for people that wanted to come out of them?

A. In no way did we obstruct the entrances.

Q. Now counsel you, Reverend Mehl, whether anything was said to you by any officer there that morning prior to the arrest, I believe Judge Rives may have asked you, and you said nothing was said to you at all about giving any warning?

A. Yes sir, I received no warning.

Q. Was Reverend Keith Brown in the same group that you were?

A. Yes, he was.

Q. How close was he to you?

A. I really don't remember sir.

Q. Are you quite sure sir that the Sheriff before arresting you didn't advise you that if you did not disband that group he was going to arrest you before he did it?

A. He never so advised me or did so within my hearing.

Q. But Reverend Brown was in that same group?

A. Yes sir.

Q. Do you know whether you were close enough to him to have heard it if he heard it?

[Tr. 238] A. I would think I would be close enough but ah I can not tell you for certain what our position was in the line relative to each other.

Q. Yes sir. You would not think he was in error would you if he had said that that announcement was made by the Sheriff?

A. I would have to accept his testimony sir.

By Mr. Wells: If the Court please, I have no further questions of this witness. Oh, yes, I do, I am sorry if Your Honor please.

Q. You were asked by counsel about some groups that were there and asked whether or not they were arrested. Now I believe you pointed out that some of these groups were over here by Sears?

A. Yes sir.

Q. That's across the street from the court house?

A. Yes sir.

Q. That is not on the street that is contiguous with the court house?

A. Not adjacent, the crowd was here.

Q. They were across the street?

A. Also came down this walk.

Q. I say across the street from the court house?

A. Yes sir.

[Tr. 239] Q. And then there were some people on the steps?

A. Yes sir.

Q. Were they demonstrating or picketing in any way or just standing there?

A. They were just spectators.

Q. Just spectators there but these crowds that were here you spoke of were across the street?

A. Yes, and there were also people right here right in this area.

Q. How many?

A. Well, there was a knot of people, a tight knot of people—

By Mr. Smith: (Interrupting) Could the record reflect where the witness is pointing. I can't tell.

By Judge Cox: It wouldn't be intelligible to say right here or right over yonder.

By Mr. Wells:

Q. Point it out.

A. Pointing right to this corner of the court house steps and right here along the curb in front of this court yard, there were newsmen right here on both sides of the cross walk on the street.

[Tr. 240] By Mr. Smith: Let the record show that he is talking about the sidewalk on the court house square near the circle of the pickets.

By the Witness: They came down the steps and across the sidewalk to the street and they were on both sides of the cross walk where the cross walk would meet the sidewalk.

By Mr. Wells:

Q. Where the crosswalk—

A. (Interrupting) Would meet the sidewalk, the cross-walk across the street in which pedestrians walk.

Q. Across going across the Main Street?

A. Right.

Q. Anyone obstructing any part of an entrance or anything?

A. They were obstructing the main entrance to the court house.

Q. This big entrance to the court house here?

A. Yes sir.

Q. And how many would you say were there?

A. I would say there were 20 or 25 on the steps, there was a tight knot of people blocking the sidewalk.

Q. Were they demonstrating or picketing?

A. They were not there demonstrating and I didn't recognize any of them, some of them were newsmen.

Q. They were not demonstrating or picketing were they?
[Tr. 241] A. They were not.

By Mr. Wells: That's all if the Court please.

By Judge Coleman: Reverend Mehl, have you suffered any kind of reprisal or punishment back in your home state for your efforts in Hattiesburg?

By the Witness: I have not sir.

By Judge Coleman:

Q. Did you know Reverend Vaux and Reverend Brown before you came down to Mississippi?

By the Witness: Yes sir. I have known Reverend Brown since 1954.

By Judge Coleman: Has Reverend Brown suffered any reprisals?

By the Witness: Not of a serious nature. I am sure some folks have disagreed with him.

By Judge Coleman: Well, that's the American tradition isn't it?

By the Witness: Yes sir.

By Judge Coleman: What about Reverend Kenneth Vaux?

[Tr. 242] By the Witness: It would be difficult to say.

By Judge Coleman: I asked you what you know of your own knowledge?

By the Witness: No definite reprisal in the name of punishing him for something that he did in Mississippi.

By Judge Coleman: Where did he live when he came down to Mississippi?

By the Witness: Pittsburgh, Pennsylvania.

By Judge Coleman: And what was his activity in life, what was he doing?

By the Witness: He was a Minister of Christian Education.

By Judge Coleman: In some regularly established church?

By the Witness: Yes sir.

By Judge Coleman: In whose church?

By the Witness: The United Presbyterian Church.

By Judge Coleman: Is that same church in which you [Tr. 243] were active and working?

By the Witness: No sir.

By Judge Coleman: Why did he move to Wausega, Illinois?

By the Witness: There were I think a number of factors, one being that he enjoys preaching and he was on a staff of four men, had very few and infrequent activities in preaching line and I think probably he also felt that this was a good time for him to go in consultation with the other men on his staff. I can't really tell you the working of his mind in this matter.

By Judge Coleman: No, I am not asking for the working of his mind but I am asking you what you know as a matter of common knowledge, was it your understanding or is it your understanding now that he went to Wausega because he had an opportunity to preach more regularly and more often?

By the Witness: Yes sir.

By Judge Coleman: He was not a pastor of the church as [Tr. 244] I understand in Pittsburgh but was your say the director of religious education?

By the Witness: In our denomination all ordained ministers are considered pastors. Now in his particular church there were four men on the staff and he was the minister in charge of christian education.

By Judge Coleman: You are talking about the Reverend Kenneth Vaux?

By the Witness: Yes sir. He would not have been considered the senior pastor but he would have been called a pastor.

By Judge Coleman: Was he fired from his pastorate or driven away from the church on account of having come down to Mississippi?

By the Witness: Not to my knowledge.

By Judge Coleman: Well, you were there in the church with him weren't you?

By the Witness: No sir.

By Judge Coleman: Did you see him regularly?

[Tr. 245] By the Witness: Approximately once a month although after we returned from Mississippi less frequently.

By Judge Coleman: Has he ever stated to you at any time or place that he was fired from his pastorate because of his trip to Mississippi?

By the Witness: No, he has not.

By Judge Coleman: Or that he was driven from his church on account of it?

By the Witness: No, he has not so stated.

By Judge Coleman: What has he told you at anytime since he came to Mississippi about punishment or deprivation visited upon his wife and children because he came to Mississippi?

By the Witness: He has not told me anything about these incidents.

By Judge Coleman: I believe that's all.

By Judge Rives: Reverend Mehl, I would like to ask you [Tr. 246] one or two questions about the crowd that was assembled on the morning that you were arrested as compared with crowds on previous days. Could you give us some estimate, your best judgment of the crowds assembled on the morning you were arrested?

By the Witness: In terms of numbers?

By Judge Rives: I beg your pardon.

By the Witness: In terms of a figure?

By Judge Rives: Yes.

By the Witness: That would be very difficult to do. As I said I think there were probably 20 to 25 on the court house steps and 8 to 12 below the steps on the sidewalk where the steps met the sidewalk, across the street at Sears there could have been 40 or 50 people over there stretched out along that sidewalk and tell you the truth sir I was a bit apprehensive when I saw the people and I didn't look at them all.

By Judge Rives: I want to get the total crowd?

[Tr. 247] By the Witness: I couldn't estimate.

By Judge Rives: Was the crowd larger or smaller on the morning of your arrest than on previous days?

By the Witness: Considerably larger.

By Judge Rives: Approximately what crowd was assembled on previous days?

By the Witness: Oh the totals there was never any crowd assembled, passersby would occasionally stop in front of the Sears store kabitz and men would sometimes sit on the

court house steps to talk with each other and I would say that the total anytime was probably less than 20.

By Judge Rives: I see.

By the Witness: 20 or less.

By Judge Rives: What about television or cameras on previous days and on this day?

By the Witness: There were never any newsmen on the [Tr. 248] scene that I saw the times I was at the Court House before April 10th.

By Judge Rives: That was the day before you were arrested?

By the Witness: No, we were arrested on the 10th and that was the only time I noticed any newsmen and they were noticeable because they were there with their cameras and they were there with their pencils and pads and talking to people.

By Judge Coleman: Reverend Mehl, I believe from what you have testified the number of so called pickets was greater on Friday and the crowd was greater. Do you know what brought about that coincidental combination that both groups should be greater on that particular day which had not occurred previously?

By the Witness: I do not.

By Judge Coleman: That's all.

By Judge Rives: Any further questions, gentlemen?

By Mr. Wells: We have none.

[Tr. 249] By Judge Rives: I would like to ask Reverend Vaux one question if he is available.

By Mr. Smith: Yes, he's in the witness room, Your Honor. May I ask this witness one question?

Q. Did you and Reverend Keith Brown grow up in the church that Reverend Vaux was the minister of christian education for?

A. Mr. Brown's family was members and my family was members in another church nearby but I attended regularly the high school and college program there and worked on their college staff one summer.

Q. Now have you ever heard from people that you knew in that church that there was opposition to Reverend Vaux in the church?

A. No, I had not heard that. I had not really talked to any of the men in that church concerning Kenneth after

I came back from Mississippi, the pressure of my own work just kept me too busy to do this.

Q. You did know that he had left Pittsburgh?

A. Very definitely. I talked to one man who was on the session the governing body of that church inquired what the facts were and he felt that it was the kind of nature [Tr. 250] that he preferred not to reveal those to me. I know there was some opposition to Ken.

Q. For going to Mississippi?

A. On the part of the congregation for going to Mississippi. I know that this resulted eventually in some disagreement among the staff members of the church concerning his trip and I think he felt this was a factor in wanting to move but he never stated to me that this was the prime factor or that he was fired or forced to move. He felt that for the good of his work there because of his desire to preach he should move on.

By Mr. Smith: Very good. That's all.

By Judge Rives: Reverend and counsel too, by not having the witnesses sworn in and the rule explained I am afraid that the rule is not well understood.

By Mr. Smith: I'm sorry sir.

By Judge Rives: And counsel and the witnesses should understand that the rule has been invoked in this case so that the witnesses will not enter the court room and they will not discuss their testimony with other witnesses nor with counsel in the presence or hearing of other witnesses [Tr. 251] and counsel will not discuss the testimony of witnesses who have testified with witnesses who have not testified in the presence of witnesses who have testified.

By Mr. Smith: All right.

By Judge Rives: That rule probably has not been made as clear—

By Mr. Smith: (Interrupting) I apologize to the Court if the rule has in anyway been violated, Your Honor.

By Judge Rives: I assume it has not but it could very well be violated.

By Judge Cox: That's the rule of this Court.

By Mr. Smith: I have no further questions.

(Witness excused.)

By Mr. Smith: Would you want Reverend Vaux?

By Judge Rives: Yes, I would like to ask Reverend Vaux just one or two questions.

Kenneth Vaux, who previously testified, recalled and [Tr. 252] testified as follows:

By Judge Rives: Reverend Vaux, I would like to ask you just one or two questions concerning the morning of the arrests. Will you tell us the circumstances just preceding the arrest what warning was given, if any, and what how you were directed, what the circumstances were, how many times you had gone around the little quadrangle or circle whatever it is and what warning was given and all the circumstances as far as you can?

By the Witness: How far back shall I go sir?

By Judge Rives: Just the morning of the arrest.

By Judge Cox: Immediately preceding the arrest.

By Judge Rives: Immediately preceding the arrest.

By the Witness: Could I start on the picket line or should I back up further.

By Judge Rives: Were you given any warning before you got on the picket line?

[Tr. 253] By the Witness: Oh no.

By Judge Rives: Just start.

By the Witness: On the picket line walking single file and we marched around two full cycles and saying that I would be the front of the line another half cycle or three-quarters of a cycle to the side of the court house and at that time the arrest there was a wall of men and the direction was to just walk around into the jail uh. I really don't recall any specific comments, they didn't say that we were arrested or uh.

By Judge Rives: Well, preceding that did Sheriff Gray or anyone else warn you against obstructing entrances to the court house or unreasonably interfering with traffic or anything of that kind?

By the Witness: Not that morning.

By Judge Rives: The afternoon before I understand the statute had been read or were you present?

By the Witness: I wasn't present in the group but it was read yes sir.

[Tr. 254] By Judge Rives: But that morning you say no warning was given except direction after you walked around twice?

By the Witness: That's right, no warning was given to me.

By Judge Rives: Just what was said to you at the time you were directed to go a different direction?

By the Witness: I don't recall any of the words. There were several men there and I don't recall any verbal words at all, it was just a direction and I asked one of the officials what is the charge they said I wouldn't want to repeat the statement they said about it you will find out later.

By Judge Cox: That's what he said to you?

By the Witness: I didn't repeat the whole statement because I wouldn't want to, I wouldn't want it in the record but it was uh some obscenity.

By Judge Rives: Something obscene in the statement?

By Mr. Smith: The answer is yes. You have to say yes.

[Tr. 255] By the Witness: Yes. Yes sir. It was something to the effect mind your uh business I will tell you later.

By Judge Rives: Mind your some obscene words and then we will tell you later. I see. I don't believe it's been asked you how long you stated in jail?

By the Witness: We were in four days, four days, I was released Monday evening because my wife was expecting a baby and the others were released the next day.

By Judge Rives: You were released on your own recognizance and you didn't make a bail bond?

By the Witness: Yes, we made a bail bond.

By Judge Rives: Made bail bond Monday afternoon?

By the Witness: Yes sir.

By Judge Rives: Do you know what's become of your criminal case, the case against you charging you with an offense?

By the Witness: I'm not sure sir.

[Tr. 256] By Judge Rives: Have you ever been tried?

By the Witness: No. We were arraigned that Monday I guess the title of the thing was arraignment where we pleaded not guilty, bail was posted and so forth.

By Judge Rives: Has the case been removed to the Federal Court or do you know?

By the Witness: I believe so.

By Judge Rives: You just are not aware of what's happened to the case?

By the Witness: To my knowledge there are several legal procedures involved.

By Judge Rives: All right sir. I think that's all I wanted to ask unless one of the other Judges wants to ask something.

By Judge Cox: Let me ask you this. As I understand it you were in this group that was arrested on Friday after having been warned on the preceding Thursday that you were violating this antipicket statute, is that right?

[Tr. 257] By the Witness: I was in the group on Friday, yes.

By Judge Cox: Was there any general difference in the behavior of your group on Friday morning when you were arrested and the behavior of your group on the occasion on which you were warned on the preceding Thursday?

By the Witness: No. Well, we were more frightened and uh for that reason we were more orderly and quiet and so forth but there was no appreciable behavior difference.

By Judge Cox: So you were doing the same thing in the same manner that you were the preceding day that you were arrested for doing?

By the Witness: Yes sir.

By Judge Cox: Would that be a fair statement?

By the Witness: Yes sir.

By Judge Cox: All right.

By Judge Coleman: Let me ask you this. Who, I don't [Tr. 258] want to hear the obscenity, but who was it that uttered this obscenity?

By the Witness: I don't know. I couldn't identify the gentleman.

By Judge Coleman: Was he an officer?

By the Witness: He had a uniform on whether he was county or local.

By Judge Coleman: What kind of uniform did he have on?

By the Witness: There were several that had uh light tan uniforms.

By Judge Coleman: I am not asking you about what

several had. I am asking you what kind of uniform this particular man had on?

By the Witness: This man had light tan uniform.

By Judge Coleman: Did he help put you in jail?

By the Witness: No, he, no, in fact he just he was part of this barricade that just directed us.

By Judge Coleman: Well, you were in the custody of the [Tr. 259] Sheriff of Forrest County weren't you, Mr. Gray, he is the Sheriff under Mississippi law——

By the Witness: Yes sir, it wasn't Mr. Gray that made this comment.

By Judge Coleman: Did Mr. Gray as the Sheriff of the County at anytime utter any obscenities toward you or mistreat you in anyway?

By the Witness: No sir, he did not.

By Judge Coleman: Now when you left to come down to Hattiesburg on this mission what was your actual employment?

By the Witness: I was a minister of the United Presbyterian Church in Pittsburgh.

By Judge Coleman: What was the name of the church?

By the Witness: Mount Lebanon United Presbyterian Church.

By Judge Coleman: And what was your official capacity or religious capacity in that church?

By the Witness: Minister of youth.

[Tr. 260] By Judge Coleman: You were an employee of the church?

By the Witness: Yes sir.

By Judge Coleman: If anybody in the religious calling can be an employee, at least they paid you a salary?

By the Witness: Yes sir.

By Judge Coleman: Did they later fire you for having come to Hattiesburg?

By the Witness: No, I didn't mean to imply that.

By Judge Coleman: You left a strong inference of reprisal and punishment with me. Now just what did you mean to tell us?

By the Witness: What I meant to tell you was that there were many people in the church who did not appreciate this type of involvement on my part and uh——

By Judge Coleman: Did that surprise you?

By the Witness: No sir, it did not.

[Tr. 261] By Judge Coleman: All right, go ahead.

By the Witness: And this polarized the church in some ways. For example, the of the four ministers two ministers were the rallying point for those that appreciated this type of involvement and the two others were rallying points for those who didn't appreciate this type of involvement and eventually the three of us who were the associates on the staff resigned to ease the tension on this.

By Judge Coleman: In other words then you left of your own volition?

By the Witness: Oh yes.

By Judge Coleman: Didn't you try to lead the Court to believe while ago that you were forcibly punished and subjected to reprisals for having come down here?

By the Witness: We were subjected to reprisals in the forms of criticism and phone calls and so forth but I didn't mean to imply we were forced to leave.

By Judge Coleman: Didn't you leave Pittsburgh to go [Tr. 262] to a place where you could preach regularly and more often?

By the Witness: Yes, this was a part of it.

By Judge Coleman: Have you been back to Mississippi or any other state since then on any similar mission?

By the Witness: No sir.

By Judge Coleman: That's your first and only experience in this thing?

By the Witness: Yes sir.

By Judge Coleman: Thank you.

By Judge Rives: You may be excused.

(Witness excused.)

By Judge Rives: Gentlemen, at this time we will take the noon recess and we will reconvene at 1:15.

(Court recessed at 12:05 P.M. until 1:15 P.M. for lunch.)

Mary Williams called as a witness for and on behalf of Plaintiffs, was sworn and testified as follows:

Direct-examination.

By Mr. Smith:

[Tr. 263] Q. Would you state your name for the Court please?

A. Mrs. Mary Williams

Q. And your address, Mrs. Williams?

A. 1301 Quitman Avenue, Hattiesburg, Mississippi.

Q. How long have you lived there?

A. 17 years.

Q. And you married with a family?

A. No, I'm single.

Q. Now, Mrs. Williams, were you in Hattiesburg on April the 10th, 1964?

A. I wuz.

Q. And are you employed in Hattiesburg?

A. I was at that time.

Q. And what was your job?

A. Maid work. I work with Mr. R. A. Stillman.

Q. Now at that time were you arrested on April the 10th, 1965, 4?

A. We were we was marching and he told us you march so well this way now march that way and we marched the way he told us to march and we marched on to the Forrest County Court House jailhouse.

Q. Now who told you that?

A. Well, I don't know the gentleman on the line told us that but he was standing there at the corner of the court house.

[Tr. 264] Q. Now tell me what happened before you were arrested, I take it you were out near the court house?

A. We were on the picket line.

Q. All right tell us where you came from to go on the picketline?

A. COFO's office on Mobile Street.

Q. Now what time did you get to the court house to go on the picket line?

A. I don't know the exactly hour but I did come there after the children came from school.

Q. What time do they get out of school?

A. They got down to the court house right around three something I mean down to the COFO's office right around three o'clock.

Q. In the afternoon?

A. In the afternoon.

Q. And you all walked from the COFO office to the Court House?

A. We did.

Q. And how many school children were there?

A. It was nine.

Q. Nine school children?

A. Nine school children, one wasn't in jail, one little boy was—witness mumbling and unable to understand—

[Tr. 265] By Judge Coleman: Just a moment. Do I understand this witness to be testifying that this arrest and all took place in the afternoon?

By Mr. Smith: Yes sir.

By Judge Coleman: I have been under impression by prior testimony that it took place around nine-thirty in the morning.

By Mr. Smith: Judge, I was going to enlighten the Court of this. There were two arrests that day, two separate groups of people arrested.

By Judge Coleman: All right.

By Mr. Smith:

Q. Now, Mrs. Williams, you and these nine children walked from the COFO house to the Court House?

A. To the picketline at the court house.

Q. All right did you have little signs with you?

A. I had we had all of us had signs had them in our hands.

Q. They were rolled up no sticks in them?

A. No.

Q. And when you got to the court house what did you do?

[Tr. 266] A. We got to the court house this mobile unit was sitting there and this man told them here come those negroes and he said don't bother them and let us march on the fourth round then he told us to march this way.

Q. Now was he a police officer this man that told you to march to the jail?

A. No, he wasn't.

Q. Was he a Sheriff's Deputy?

A. I don't know who he was, a man standing there and he told us to march so well this way now march that way and we marched on to the Forrest County Jail.

Q. Did he have a uniform on?

A. No, he didn't have on a uniform.

Q. Now while you all were marching were you keeping anybody from walking into the court house?

A. No, we was not.

Q. I am going to show you a little map and ask you to look at it and tell you that that's been put into evidence in this case as a little map of the front yard of the court house there. Do you see what it is, can you understand it a little bit?

A. This is how we were marching.

Q. Show it to the Court, Mrs. Williams, so they can see it.
[Tr. 267] A. This is how we were marching go west going back northwest from by Sears Roebuck going around come up this little steps, we wasn't picketing anything but the flag pole and we were coming back along side the court house coming right to the tip of the steps and right back down.

Q. In other words—

A. (Interrupting) We did not block the entrance.

Q. You were making a circle?

A. We were.

Q. And the thing in the middle of the circle was the flag pole?

A. That's right.

Q. Have the American Flag on it?

A. Had the flag on it.

Q. All right. Now were you bothered by anybody before this man told you to march to jail?

A. No, didn't anyone bother us.

Q. Did you say anything to anybody?

A. No, we was just picketing.

Q. Did anybody try to go in or out of the court house while you all were there?

A. No, they didn't, wasn't no one there to enter the court house, we were just on the line picketing.

Q. And there was nobody around there using the streets [Tr. 268] or sidewalks trying to get into the court house?

A. No.

Q. Did the police officer tell you why you were arrested?

A. Never did tell us anything, just told us we was marching so well this way now march that way and that was the Forrest County Jail.

Q. That's all he said to you?

A. That's all he said until we got near the door and he asked this little boy how old he were.

Q. What were you all down there for, Mrs. Williams?

A. Well, we had been going up there trying to get our registration forms filled out and we couldn't get them filled out so we just decided to picket and let the people know that we are dissatisfied.

By Mr. Smith: That's all. I'm sorry, excuse me.

Q. How many people were there in the march?

A. It was nine children were on the line with me. I was the onlyest adult among them that afternoon but one of the little boys was turned around at the jail house door they wouldn't let him get in, he his name was Curtis Duckworth, he was thirteen years of age and they wouldn't take him but the rest of the children they took them in.

Q. There were ten people altogether then?

[Tr. 269] A. It was ten with me.

Q. Now how long did you stay in jail?

A. I stayed in jail from April 10th until Thursday April 16th.

Q. Was that when I came down and got you out?

A. That's right.

Q. Now what happened to those children?

A. Well, he called me down and told me to come down and call the children's parents and let them go home. I don't know the children's address so he allowed me privilege to go down and get the telephone where they get their calls those that didn't have phones at their homes so I called the parents to come get the children.

By Mr. Smith: I see. That's all.

By the Witness: And the children went.

By Mr. Smith: Thank you.

Cross-examination:

By Mr. Wells:

Q. Now, Mrs. Williams, you say that you waited for the children to come from school?

A. I did.

[Tr. 270] Q. Where was it you waited?

A. Say why I waited?

Q. Where?

A. Oh I waited at COFO office I think 520 Mobile Street if I have that address correct.

Q. And these children that you talk about was Robert Plumb one of them?

A. I don't remember him being in that number when we came on down there. Oh yes he was in that number cause all the children had came from school that afternoon.

Q. He's 18 years old isn't he?

A. I don't know his age.

Q. Was Billy McDonald in the group?

A. He were.

Q. He's 17 years old isn't he?

A. I don't know their age. I just knew they were school children.

Q. Was Willie Dale Patton in the group?

A. She were.

Q. She is 17 isn't she?

A. I don't know her age.

Q. Was Robert Earl Jones in the group?

A. I don't remember him.

Q. Was Eddie Stevenson in the group?

[Tr. 271] A. I don't know him.

Q. Was Georgia Martin in the group?

A. Yes, she were.

Q. She is 21 isn't she?

A. I don't know their ages.

Q. Was Linda Wilson in the group?

A. Yes, she were.

Q. She is 18 years old isn't she?

A. I don't know her age.

Q. Was Grace Hathorn in the group?

A. Yes, she was.

Q. She is 17 isn't she?

A. I don't know her age.

Q. Well, none of these were little children?

A. They were school children.

Q. That's right.

A. That's the reason I call them children they were in school.

Q. Including Georgia Martin who is 21 years old?

A. I don't know her age.

Q. I see. Now they were taken to jail and all these children were released to their parents weren't they?

A. They were.

Q. They were turned a loose to their parents and you were the only one kept in jail weren't you?

[Tr. 272] A. No, I wasn't the onlyest one kept cause there were more people arrested.

A. I mean in that group?

A. Oh I was.

Q. You were the only one that was kept weren't you, the others were——

A. (Interrupting) Let me repeat myself. I don't remember Georgia being in that number with us when we went that afternoon I don't remember her being in there. She probably was arrested in the morning.

Q. You don't remember her being there?

A. I can't no.

Q. But everybody that was in that group and arrested and taken to the jail were released to their parents except you weren't they?

A. They were these children.

Q. Now none of these children with you, strike that please. What did you say your reason for going there was?

A. We had been to the court house trying to fill out forms to become registered voters and they wouldn't let us pass on those forms and we were out there on that picket line picketing to show the people that we were dissatisfied.

Q. Now at that very time which was in April of 1964 the [Tr. 273] Circuit Clerk, Mr. Lynd, the person who was registering was under an injunction by the Federal Court wasn't he?

A. Yes; he was.

Q. And he was operating under that injunction wasn't he?

A. (No answer.)

Q. His office was being conducted under an injunction from the Federal Court wasn't it?

A. Yes.

Q. Are you registered now?

A. I am.

Q. When did you get registered?

A. I got registered after the court was held in New Orleans, Louisiana.

Q. I see. Now were you the only one in the group that was old enough to register?

A. I were that afternoon.

Q. That's what I mean, there wasn't a single person in your group except you that was old enough to register was it?

A. That's right.

Q. And yet you say that whole group was going up there to show people they was dissatisfied because they couldn't get registered?

[Tr. 274] A. I saw I were.

Q. Well, you took this group up there didn't you, Mrs. Williams?

A. I didn't take them, they went.

Q. You waited at COFO headquarters until they came from school didn't you?

A. That's right.

Q. Then you led them up to the court house didn't you?

A. I didn't lead them, we went together.

Q. I understand, but you were in charge of the group were you not?

A. (No answer.)

Q. Be fair with the Court, you were in charge of that group weren't you?

A. They were already going and I waited there for them.

Q. What do you mean they were already going?

A. Because they picket when they get out of school evening when they wanted to.

Q. Did you leave the headquarters of COFO with this group of children?

A. I did.

Q. Weren't you being the only grown person in the crowd weren't you actually in charge of the group?

A. I was the onlyest adult with the children.

Q. That's right and so you took these children with you [Tr. 275] for the purpose you have said didn't you?

A. Yes.

Q. And yet not a one of them was eligible to register were they?

A. (No answer.)

Q. Were they because of their age?

A. That's right.

Q. And everyone of them was turned aloose to their parents shortly after they were put in jail weren't they?

A. No, they wasn't turned loose shortly after they got in jail. After we had a hearing that Monday we had a hearing that Monday and then the jailer asked did I know where those children get their calls.

Q. And when they got in touch with their parents they turned them loose to their parents didn't they?

A. Yes, they did.

Q. Just released them all to their parents?

A. (No answer.)

By Mr. Wells: I have no further questions of this witness if the Court please.

(Witness excused.)

By Mr. Smith: Next witness Reverend John Earl Cameron.

[Tr. 276] By Mr. Smith: May it please the Court, I would like to make a request of the Court. The three ministers who testified this morning are not now going to be able to leave until later because of transportation schedule but they would like to come in the court room and sit down if they could and watch the trial.

By Mr. Wells: If Your Honor please, I had told counsel at noon that one of them I asked to be held over counsel advised me that his wife was expecting a baby or something and I told him to go ahead and let him be released but in view of the identification of some pictures I don't want to be unkind or arbitrary but it's quite possible I may need to call him back for further cross examination. I am trying to be reasonable but I just would rather that they stay under the rule because I might need to put them back on the stand.

By Judge Rives: You will have to keep them under the rule.

John Earl Cameron called as a witness for and on behalf of Plaintiff, was sworn and testified as follows:

Direct examination.

[Tr. 277] By Mr. Smith:

Q. Would you state your name to the Court please?

A. Reverend John Earl Cameron.

Q. Your address please?

A. 401 Ashford Street, Hattiesburg, Mississippi.

Q. Reverend Cameron, are you presently an ordained minister?

A. I am.

Q. Of what church?

A. Sweet Pilgrim Baptist Church.

Q. And how long have you been so ordained?

A. Oh for 13 years plus.

Q. Where did you receive your schooling?

A. My elementary and high school was received in Hattiesburg, Forrest County, and college at Holly Spring Seminary in Nashville, Tennessee.

Q. And you and the lady that preceded you on the witness stand, Mrs. Mary Williams, are of the negro race, is that not correct?

A. That's correct.

Q. Now, Reverend, you were an ordained minister with a church in Hattiesburg on April 10th, 1964?

A. I was.

Q. Were you at that time connected with the National Council of Churches of Christ?

[Tr. 278] A. Yes, I was.

Q. In what capacity?

A. I was a director of the Hattiesburg ministers project.

Q. And what duties did that require you to do?

A. To coordinate the activities with the ministers and the laymen who would come into the city with the community.

Q. Now why were these ministers and laymen coming into the city to work with the community?

A. Because the community invited them in the first place in order to give momentum to the negro community to help to alleviate uh much fear in the hearts and minds of the citizens thereof.

Q. Did it have anything to do with a voter registration drive under way that year by the Council of Federated Organizations?

A. Yes, it did.

Q. In what respect did it relate to that?

A. We have to canvass the areas of Hattiesburg, Forrest County, and uh it served to give strength to the negro community under our direction there to uh give lend moral and religious uh teachings to responsible citizens of a given area.

Q. Now did you all engage in picketing of the Forrest [Tr. 279] County Court House in Hattiesburg?

A. We did.

Q. How long had that picketing been going on by April 10th, 1964?

A. Since January 22nd.

Q. What was the purpose of the picketing specifically?

A. The purpose of the picketing was to lend uh faith and encouragement to the local Negro community because of the fear and so many of the uh citizens in the Negro community felt that without some help that they would not be able to go to the registrar's office to register to vote and with many testimonies from them uh that after they were able to see white ministers and laymen on the picket line—

By Mr. Wells: Pardon me, Reverend. If the Court please, this is going into a phase of what frame of mind some of these people were in an expression of his as to how they felt and frame of mind which is bound to be gathered from hearsay and we object to it.

By Mr. Smith: I would say in response to the objection of counsel that this man is a lifelong resident of Hattiesburg and a minister to the negro people there and actively involved for many years in the civil rights and voter [Tr. 280] registration movement and I think that he would be qualified to comment upon the attitudes and feelings

of the negro community in connection with the voter registration drive.

By Judge Rives: The Court doesn't think that their frame of mind is too important, the real issue is the effort to register and what happened in connection with it and the objection will be sustained.

By Mr. Smith: Very well. I will terminate that line of questioning.

Q. Mr. Cameron or Reverend Cameron, had you ever had occasion to see a picket line down at the court house before the day of your arrest on April the 10th, 1964?

A. There were uh picketline?

Q. Yes.

A. Yes. Uh uh not at the court house as such uh but in other places I have.

Q. Had there ever been a picket line around the entire court house square?

A. Never.

Q. That you know of?

A. Not to my knowledge.

Q. What was, in other words the day that you were [Tr. 281] arrested was the first time that you had been on the picket line and had seen it?

A. Uh that was not uh the first picket line that was not the first time the picket line was established the day I was arrested, no.

Q. No, I am asking you if that was the first time you had been on the picket line, Reverend?

A. It was not the first time, no.

Q. Now the day of your arrest could you describe to us what happened, how you got to the picket line in front of the court house and what occurred thereafter?

A. We walked from the headquarters most of us did, some rode up, and they had been advised by me and others working with me as enter the area to picket to keep proper distance uh in the picketline and uh not to engage in any loud or excessive talking and to provide an orderly picket line uh in order to give again strength for people to feel free to go up to register to vote and on that morning of the arrest we had only made I only made one and a half uh circles in the area before being arrested by the uh Sheriff.

Q. Sheriff Gray?

A. Sheriff Gray.

Q. How did he go about arresting you?

[Tr. 282] A. Well, he said to me as I walked up to him all right Cameron you are under arrest and he said follow the rest of the line, some people were arrested preceding me and kept going to the county jail.

By Judge Cox: He tell you what you were being arrested for?

By the Witness: He did not.

By Judge Cox: Did you know what you were being arrested for?

By the Witness: I was not sure. I knew what had been said, but the only thing he said to me was all right Cameron you are under arrest.

By Mr. Smith:

Q. Had he told you before to break up the picket line?

A. He had not.

Q. Or to go home?

A. No.

Q. Or that you were blocking the entrance to the court house?

A. He had not.

Q. Was your picket line blocking the entrances to the court house?

A. The picket line was not.

[Tr. 283] Q. You know the entrance to the little Home Demonstration lady's office is?

A. I do.

Q. Was the picket line in the vicinity of that office door?

A. Not to prevent anyone from going in or out.

Q. This was at the time of the arrest?

A. That's right.

Q. Had you seen anybody going in and out of that door or any other door to the court house during the time of the picketing on the morning you were arrested?

A. I did not. We were only there a very short time before being arrested.

Q. Did you see any crowds of people around there?

A. Well, the street was very crowded on both sides of the street.

Q. That is on the side where the court house was and on the side where the Sears Roebuck store was as well?

A. That's correct.

Q. Were there any people on the steps of the court house?

A. Yes, there was.

Q. About how many?

A. I couldn't say for sure but several people were on the steps.

[Tr. 284] Q. Where was Sheriff Gray?

A. He was standing at the corner on the sidewalk with his back to the entrance the main entrance to the court house.

Q. Were any of the sidewalks in that area on the court house side of that street blocked by the people that were standing around?

A. Yes, it was quite crowded that morning and people who are not participating in the picket line was standing there watching.

Q. Were any of these people colored people?

A. I didn't recall any.

Q. They were all white people?

A. Yes.

Q. Were the TC cameramen there?

A. Yes, they were.

Q. What about newspapermen?

A. The representative from the local newspaper was there.

Q. Had you all called them to come down there and witness this?

A. We did not.

Q. If somebody in your organization had called them would you be likely to have known about it?

A. I would have known about it.

[Tr. 285] Q. Was it your policy to do so?

A. No, it isn't.

Q. Now, Reverend Cameron, since the time of your arrest have you lived in Hattiesburg?

A. I have, yes.

Q. Since from that time to now have there been any parades or demonstrations or marches in Hattiesburg?

A. There has ah there has been several parades and marches throughout the main part of the city.

Q. Been anybody arrested under this statute about blocking public streets and things?

A. Not to my knowledge.

Q. Is there going to be a parade tomorrow?

A. I think so.

Q. What parade is that going to be?

A. Ah ah I disrecall. I just returned to the city but I did have information there was going to be a parade tomorrow.

Q. Have you ever seen parades since the day you were arrested in Hattiesburg where they had to block off the streets and traffic couldn't use them?

A. Yes, there has been several school parades through uh the main area of the city all across all from the north side of town through the entire south side of town across Main Street.

[Tr. 286] Q. Do they go by the court house?

A. They some do and some do not.

Q. Do they go by the city hall?

A. Uh one did go by the city hall.

Q. Was anybody ever arrested for blocking the streets?

A. Not to my knowledge. The streets were uh blocked off in order for the parade to proceed.

By Mr. Smith: I see. That's all, thank you.

Cross-examination.

By Mr. Wells:

Q. Reverend Cameron, these parades you are talking about are parades where people had made arrangements with the city to participate and have just what's normal parade like you have a parade for the fair and Christmas and thinks like that wasn't it?

A. I don't know if they were arrangements with the city.

Q. Well, they weren't demonstrations and picketing type parade, it was just a parade like most cities and towns have from time to time wasn't it?

A. It was a school parade.

Q. School parades, parades for the school?

A. Yes.

Q. And the city was up there directing traffic weren't they?

[Tr. 287] A. Yes, they were.

Q. You don't class that kind of parade in the same category as picketing around a court house do you?

By Mr. Smith: Your Honor, I think that's asking the witness for an opinion, that's really one that this Court might have to meet at some time.

By Judge Rives: Overruled.

By Mr. Wells:

Q. You don't put that in the same class with the type of picketing you all were doing do you?

A. Well, it was not for the same purpose.

Q. That's right. Now, Reverend Cameron, at the time that this occurred I believe you were a candidate for United States Senate were you not?

A. Not at this time I was not.

Q. You later?

A. That's correct.

Q. Later became a candidate that year shortly thereafter?

A. That's correct.

By Judge Coleman: He was a candidate for the House of Representatives, not the Senate.

[Tr. 288] By Mr. Wells:

Q. Was it House of Representatives?

A. Right.

Q. U. S. Representative. Now I believe you said that, this movement started, these parades started on the 22nd of January?

A. That's correct.

Q. And for some time for a while after that there was some times as many as 100 or 150 people up there making a complete circle of the court house on the sidewalk was there not?

A. It was not a complete circle of the court house. It was on two sides.

Q. I understand, but there were literally over 100 people there at times weren't there?

A. Perhaps there was. I never knew the exact number.

Q. That's right, and because of that great number and

most now on those parades they stayed on the sidewalk off the court house grounds didn't they?

A. That's correct on one side.

Q. I see.

A. Not the entire sidewalk itself.

Q. And as a result of those big crowds on those sidewalks the Police Department there in Hattiesburg set aside and put some barricades up there and set aside an area [Tr. 289] where you people could have your picket and demonstrations didn't they?

A. Yes, they did.

Q. And actually kept the public out of that area which was reserved for you wasn't it?

A. They did not keep them out of the area. The police were there.

Q. I mean they blocked this area off there where you all could picket from time to time and it was open because of the barricades for the general public to go through for a long time weren't they?

A. Yes.

Q. And then when that was done there was picketing spasmodically, sometimes twice a week, sometimes three times a week, sometimes once a week clear on down into April wasn't it?

A. That's correct.

Q. And nobody was bothered, no arrests were made and you were permitted to do it weren't you?

A. I would not say nobody was bothered but no arrests was made.

Q. I mean by the officers enforcing the law?

A. I am not sure I understand this question.

Q. In otherwords, the officers didn't try to stop you all or interfere with those picket lines during that period [Tr. 290] of time?

A. Ah nothing more than uh uh jeering occasionally at people on the picket line.

Q. That was jeering from people coming by on the street?

A. And from the Police Department too.

Q. Was anybody in the Sheriff's Office that did it?

A. I don't know directly out of the Sheriff's office but they were uniformed men who were doing it.

Q. The Sheriff and his deputies don't wear uniforms do they?

A. You speaking of the county?

Q. I am Speaking of the Sheriff of the county and his deputies they don't wear uniforms, they are all plain clothes aren't they?

A. Yes.

Q. And you did have some little jeering from some people in uniform from time to time?

A. Right..

Q. But no effort was made to stop you?

A. No effort was made.

Q. And that went on through February and March and up to this occurrence in April didn't it?

A. The picket line yes it did.

Q. Now were — on the picket line on Thursday, April the 9th, that afternoon?

[Tr. 291] A. April the 9th?

Q. The day before the arrest on the 10th?

A. Not the day before.

Q. You were not there when the group was stopped and this new law which prohibited picketing and demonstrations in such a way as to obstruct and interfere with entrances and exits to public buildings was read to them?

A. I was not there on that day.

Q. And the Sheriff explained to them what it meant, you were not there that day?

A. I was not.

Q. But you were you at a meeting of the ministers that Thursday night when a prepared written statement was a written statement was prepared to be given to the press along with Reverend Mehl and Reverend Jones and Reverend Vaux?

A. Yes.

Q. You were there. You were there when Reverend Vaux contacted an attorney up at Greenwood and asked something about his construction of this new law, were you there then?

A. I uh I'm not sure. I do not recall this particular reference you have.

Q. Did you understand he had contacted some lawyer [Tr. 292] about it?

A. Well, several lawyers had been contacted but I am not sure of the reference you have now.

Q. I see, and then on Friday morning, the 10th of April, the largest crowd that had gathered in some many weeks got together and went to, the court house didn't you?

A. I can't say it was the largest crowd but it was a sizeable crowd.

Q. I say in several to

A. Perhaps so.

Q. Some 25 or 40 people

A. Approximately.

Q. I see, and had you the warning that had to

and been told about the location?

A. I had heard about

Q. Who was leading this Friday morning, the

one on this morning.

A. I'm not sure who was on the picket line.

person was on the picket line.

Q. Wasn't it you sir?

A. I came across the street first but I can't recall now if I was the first one inside the picket area or not but it could have been me.

Q. You that was leading the picket line. I am going to [Tr. 293] show you a picture which has been marked as Plaintiff's Exhibit 1 to the evidence of Keith Brown being a picture that has been identified as having been taken that Friday morning, April the 10th, of the arrest which was shortly before the arrests were made and ask you if you look at it and see if you are shown in that picture?

A. It looks like a partial picture of my head here.

Q. On the picture somewhere?

A. Yes.

Q. And where you are pointing is right over the head of the person in this picture who seems to be first, is that right?

A. That's correct.

Q. Right in front in other words the fourth person from the end here, is that right?

A. That's correct.

Q. Is that correct?

A. I think so.

Q. Now, Reverend, after you had marched around sev-

Q. The Sheriff and his deputies don't wear uniforms do they?

A. You speaking of the county?

Q. I am Speaking of the Sheriff of the county and his deputies they don't wear uniforms, they are all plain clothes aren't they?

A. Yes.

Q. And you did have some little jeering from some people in uniform from time to time?

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A. I uh I'm not sure. I do not recall this particular reference you have.

Q. Did you understand he had contacted some lawyer [Tr. 292] about it?

A. Well, several lawyers had been contacted but I am not sure of the reference you have now.

Q. I see, and then on Friday morning, the 10th of April, the largest crowd that had gathered in some many weeks got together and went to the court house didn't you?

A. I can't say it was the largest crowd but it was a sizeable crowd.

Q. I say in several weeks?

A. Perhaps so.

Q. Some 35 or 40 people?

A. Approximately.

Q. I see, and had you learned of and been told about the warning that had been given the day before?

A. I had heard about it.

Q. Who was leading the picket line on this morning, this Friday morning, April 10th?

A. I'm not sure who the first person was on the picket line.

Q. Wasn't it you sir?

A. I came across the street first but I can't recall now if I was the first one inside the picket area or not but it could have been me.

Q. You that was leading the picket line. I am going to [Tr. 293] show you a picture which has been marked as Plaintiff's Exhibit 1 to the evidence of Keith Brown being a picture that has been identified as having been taken that Friday morning, April the 10th, of the arrest which was shortly before the arrests were made and ask you if you look at it and see if you are shown in that picture?

A. It looks like a partial picture of my head here.

Q. On the picture somewhere?

A. Yes.

Q. And where you are pointing is right over the head of the person in this picture who seems to be first, is that right?

A. That's correct.

Q. Right in front in other words the fourth person from the end here, is that right?

A. That's correct.

Q. Is that correct?

A. I think so.

Q. Now, Reverend, after you had marched around sev-

eral times, well, do you know where the entrance to the County Court Room is that goes under the front under those steps?

A. I do know.

Q. You know. In other words, the Court please I think [Tr. 294] it's going to be necessary for me to approach the witness to try to get him identified on this. I show you a diagram which was drawn by Reverend Brown I believe—

By Mr. Smith: Yes.

By Mr. Wells:

Q. Yes, it's marked as Exhibit P-3 to the evidence of Keith Brown showing rough outline of the front of the court house, Reverend, this being the front steps of the court house, this being the area that was being picketed around and the street out here in front. Have you got yourself oriented right now?

A. I think so.

Q. And this A that's here has been identified as the entrance to the Home Demonstration Agent's office?

A. Yes, I understand now.

Q. Do you understand now?

A. Yes.

Q. The entrance to the County Court Room is along right about here where you go actually under the front part is it not?

A. Yes.

Q. In other words the County Court Room is on the ground level?

[Tr. 295] A. Yes.

Q. And as you walk up these steps here to enter the court house you are actually on the second floor?

A. Yes.

Q. Is that right?

A. That's correct.

Q. So the entrance to the County Court Room is just here to the left of this door marked A isn't it?

A. It is, the north entrance is.

Q. The north entrance is. Now as you all marched around there isn't right along in that area where Sheriff Gray stopped you?

A. That's correct on the corner.

Q. Right there on the corner and didn't he say something to this effect all right Gray there are too many of you, I mean Cameron, excuse me—didn't the Sheriff stop and say something similar to this all right Cameron there are too many of you and you are walking too close together and you are violating the law?

A. I never heard.

Q. And you have been warned and if you don't stop it I am going to have to arrest you?

A. I never heard those words.

Q. What did he say to you?

[Tr. 296] A. All right Cameron you are under arrest. That's the only thing he said to me, only thing I heard him say.

Q. You deny then that he first told you that there were too many of you, that you were violating the law and that if you didn't stop it he was going to have to arrest you?

A. He didn't say that.

Q. And then after that a complete revolution one turn was made by the whole group after he said that and then is when he put the group under arrest?

A. No.

Q. You say that did not happen?

A. That did not happen.

Q. Did you see, do you know Mr. James Dukes here the County Attorney?

A. I do know him.

Q. Did you see him there by the Sheriff at the time he stopped you?

A. I saw him a few moments few seconds before I was arrested.

Q. He was standing right there by the Sheriff wasn't he?

A. I think so.

By Mr. Wells: Excuse me just a minute, if Your Honor please.

[Tr. 297] Q. Do you know how many complete turns you made there?

A. Uh I made two uh one revolution.

Q. You made only one?

A. Just one.

Q. How much did the group make?

A. Apparently that was all they made too because uh when I made the first one was when I was let me I don't think it was quite two but was one and a part.

Q. In other words you are telling the Court that you made one complete revolution and part of another?

A. Just a few feet to start another one because uh it depends on the angle that we started across the street from Batson Street directly across to the court house.

Q. In other words this area you marched around you just went around once and got arrested?

A. That's correct.

Q. The whole group did, no more than once?

A. Not to my knowledge. I did not look back after I was arrested.

Q. Counsel asked you if you contacted or anyone in your group contacted the news media prior to Friday morning and you said that they did not and you thought you would have known it if they had. Now you are talking about the ministers group are you not?

[Tr. 298] A. That's correct.

Q. You are not talking about the COFO group because their headquarters were at a different place from yours, is that right?

A. That's correct.

Q. And you do not know what they might have done?

A. I think on this occasion that they were going to do so that they would have contacted our office.

Q. You think they would have?

A. I am sure of this.

Q. Was Robert Moses in Hattiesburg that day?

A. I am not sure if he was or not.

Q. You know Robert Moses?

A. I do know him.

Q. He was at that time project director of the Mississippi project for COFO was he not?

A. That's correct.

Q. Have you worked with him in connection with any drive other than in Hattiesburg?

A. I have not.

Q. You have not. You don't know what his policy is

then about notifying the press about when you are going to have demonstrations?

A. I do not know his policy in other areas.

[Tr. 299] By Mr. Wells: I see. If the Court please, I have no further questions of this witness.

Redirect examination.

By Mr. Smith: I have some redirect if I might.

Q. How long were you in jail, Reverend Cameron?

A. From Friday through Monday. From the day of the arrest through the Monday or Tuesday, I can't be sure, I think it was three days.

Q. And you posted a cash bail bond for release?

A. That's correct.

By Judge Cox: How much bail was required?

By the Witness: \$500.00.

By Mr. Smith:

Q. Now what you have a sign or something you brought with you, Reverend. Is this sign one that was used on the demonstrations on the day of the picket line on the day of the arrest?

A. Uh either on that day or during the picketing itself.

Q. Would you show that to the Court please? To the Court, not to us.

(Witness showed sign above referred to the Court.)

[Tr. 300] By Mr. Smith: Now you may sit down. In connection with the witness' testimony I am going to offer, introduce and file into evidence the sign marking same for identification Plaintiff 5 I think.

By Judge Rives: It may be received and so marked.

(Received in evidence and marked Plaintiff's Exhibit 5.)

By Mr. Smith:

Q. What was the effect of this arrest upon the negro citizens in Hattiesburg?

By Mr. Wells: Just a minute. We object to that if the Court please.

By Mr. Smith: I make reference again, Your Honors, I make reference again, Your Honors, to the language of Mr. Justice Brennan in the Dumbrosky versus Fista case in which he discussed the effect of such arrests of civil rights persons engaged in civil rights activities and I think he used the language the chilling effect of such statutes, in that case he was talking about the statute found inviolate by the Supreme Court. Here by this question of this witness I am attempting to determine what effect so as to follow the language and the meaning of the Dumbrosky decision that this arrest had upon those involved in this particular effort. [Tr. 301] By Judge Rives: Mr. Smith, he has testified that there have been repeated parades. Now whether those were civil rights parades or not he has not made clear since then and I think he could give all the facts but it is up to the Court to judge the effect give what the people have done since then in the way of registering or offering to register or parading the Court would have to judge the effects.

By Mr. Smith: Very well, Your Honor.

By Judge Rives: Sustain the objection and give you exception to it.

By Mr. Smith: Very well.

Q. Reverend Cameron, did anyone express fear or trepidation to you, fear for their safety or their personal safety or fear of arrest after this arrest of April the 10th as a result thereof?

By Judge Coleman: And for participating in an effort to vote?

By Mr. Smith: Yes.

[Tr. 302] By Judge Coleman: They could have been arrested for many things.

By Mr. Smith: Yes, yes, of course, I'm sorry.

By Judge Rives: You object?

By Mr. Wells: Yes sir.

By Judge Rives: Overruled.

By Mr. Smith:

Q. You may answer.

A. There were many people did express fear uh after the mass arrests to the extent that many citizens were afraid

to go to the court house for any purpose. Many had indeed lost their jobs, their lives were threatened—

By Mr. Wells: Court please, we object to that, that's certainly hearsay.

By Mr. Smith:

Q. You know of any persons whose lives were threatened after these arrests?

A. Yes, I do.

Q. Who?

A. Uh Mr. Hathorn.

[Tr. 303] By Mr. Wells: We object to that if the Court please if he received that information by someone telling him.

By Judge Rives: How do you know this?

By the Witness: He told me himself.

By Mr. Wells: We object to that if the Court please.

By Judge Rives: It will be sustained as hearsay.

By Mr. Smith:

Q. Did you receive any threats yourself?

A. I received many threats.

Q. After this arrest?

A. Yes, I have.

Q. Was it more difficult or as easy as before or less easy to obtain persons to walk on the picket lines after this arrest?

A. It was much more difficult.

Q. Did anyone ever tell you why if you asked them to serve on the picket line and they said no why they would not serve?

A. They did.

Q. What reasons did they give you?

[Tr. 304] By Mr. Wells: We object to that if the Court please.

By Mr. Smith: I think that is admissible, Your Honors.

By Judge Rives: Overrule the objection.

By the Witness: The reasons were they uh were uh afraid they were going to lose their jobs. They were told by their

employers that if they participated in the picket line that in fact that would be their job.

By Mr. Smith:

Q. Now you are not saying that this is absolutely true because you don't know but you are saying that this is what was told to you?

A. That's correct and was proven without a doubt.

Q. Did anyone lose their jobs after this demonstration and arrest that followed?

A. They did.

Q. Who?

A. Again the same party just mentioned.

Q. Who is that?

A. Uh Mr. Hathorn and uh several employees at the hospital and uh uh there were two men uh at the Dixie Pine Timber Plant who lost their job.

[Tr. 305] Q. Is that out at Palmer's Crossing?

A. Yes, it is.

By Judge Rives: What connection did losing their jobs have to do with this statute?

By Mr. Smith: Well, Your Honor, we were talking about the effects of the enforcement of the statute and this I think, I will try to clarify it, Your Honor.

Q. Were these people involved in the movement at all?

A. They were uh talking about it and they had planned to do something themselves and were talking about it on their jobs and after doing so they were told if they did participate in this what would happen.

By Mr. Wells: Now if the Court please, we object to that unless he——

By Judge Rives: I don't see any connection of that with this statute. That would be a chilling effect of economic pressure——

By Mr. Smith: (Interrupting) I agree, Your Honor. I will terminate this line of questioning.

[Tr. 306] By Judge Rives: The objection will be sustained.

By Mr. Smith: That's all, Your Honor. Thank you.

Recross-examination.

By Mr. Wells:

Q. Reverend Cameron, from the time you started picketing until you were arrested how much time would you say elapsed?

A. Would you phrase that again please?

Q. About how long were you on the picket line picketing before the arrests were made that Friday morning?

A. Oh very short, very short. Oh it couldn't have been over, it couldn't have been really five minutes.

Q. You don't think it was as much as five minutes?

A. I do not think so.

Q. Did you make an affidavit which was filed in this matter when it was heard by the Court before?

A. An affidavit concerning the arrests?

Q. Uh huh. Didn't you make an affidavit which was prepared by your attorney to be submitted to the Court when this matter was heard before?

A. Yes.

Q. You recall how long you said you were picketing there on that occasion before you were arrested?

A. I do not recall it uh the exact time given there but [Tr. 307] as I say now—

Q. (Interrupting) You stated in that affidavit you picketed for approximately ten minutes before you were arrested did you not?

A. Well, approximately I perhaps I did but I am saying now I didn't keep a watch on the time.

Q. But ten would come nearer being it than five wouldn't it, Reverend?

A. I think between the time would be more accurate.

Q. Your recollection was a little fresher when you made that affidavit nearly a year ago wasn't it?

A. Quite so.

Q. That's right. Now after this arrest on Friday following that there were another arrest made of a group of people on May the 18th was it not, do you recall that?

A. I think so.

Q. You recall that it was in the complaint which was filed in your name which—

A. (Interrupting) Yes.

Q. (Continuing) I assume you read you set out that again on the 18th of May——

A. (Interrupting) Yes.

Q. (Continuing) there was another group arrested there?

A. Yes.

[Tr. 308] Q. Is that right?

A. That's correct.

Q. Between this time that is April the 11th and May the 18th there was a small picket line there in front of that Court House practically every day wasn't it?

A. Quite often, yes.

Q. And they were in small groups not ganged up like you were on Friday weren't they?

A. Yes.

Q. And they were not molested by the officers but were permitted to picket there because they weren't obstructing anything weren't they?

A. I cannot say they were not molested, they were.

Q. They were not arrested were they?

A. They were not arrested.

Q. And they were permitted to picket in small groups there from the 11th of April to May the 18th without any arrests made weren't they?

A. That's correct.

Q. On May the 18th another large group came just as had been on this Friday the 10th; didn't they?

A. Yes.

Q. And then some additional arrests were made, is that right?

A. That's right.

[Tr. 309] Q. So the only time any arrests were made by the Sheriff there were on these two occasions when there was a large group there together and no arrests were made when they were small groups were they?

A. That's not correct. There were some arrested that same day and the following day which was considerably smaller and they were arrested.

Q. I understand that that afternoon there were nine teenagers that Mrs. Williams took up there that were arrested. Is that right?

A. That's correct.

Q. And the teenagers as she testified were released to their parents?

A. Yes.

Q. Then on the next day the 11th a large group was there, pretty good size group was there and some arrests were made weren't they?

A. I cannot recall the number.

Q. As a matter of fact there were nine in that group and they were talking right close together weren't they?

A. I do not recall.

Q. And when the Sheriff told them that they were walking too close and unless they stopped because they were too close to that entrance two of them left. Do you recall that?

[Tr. 310] A. I do not. I was in jail at the time.

Q. And the others continued and were arrested you don't know about that?

A. I do not.

Q. So then the only arrests that were made were on April the 10th and 11th and May the 18th is that right?

A. Well, it's hard to say right here that was the only time uh that arrests were made.

Q. I mean for picketing there at the Court House?

A. Yes. This is what I am saying I cannot recall right now exactly how many times people were arrested on the picket line. There were several arrests made.

Q. On May the 10th and 11th, I mean April the 10th and 11th, isn't that right?

A. Yes.

Q. And then again on the 18th?

A. Yes.

By Mr. Wells: Court please, I have no further questions of this witness.

By Mr. Smith: I have a few questions on the numbers.

Q. How many people were arrested with you, Reverend Cameron?

[Tr. 311] A. I believe it was 39 or 43.

Q. Was that for the entire day?

A. It was not for the entire day.

Q. That was for at the time you were arrested?

A. At the time I was arrested.

Q. How many people were arrested on the 18th of May?

A. I think there were 19 or 9, 19 the following day.

Q. No, no, May 18?

A. On May 18th. I can't recall now how many that day were arrested.

By Mr. Smith: That's all.

By Judge Rives: Reverend Cameron, what's become of the case that was brought against you, the criminal case, has it been tried, the criminal case for which you were arrested?

By the Witness: We have had one hearing on it before today that I was present in.

By Judge Rives: Have you been tried as to whether you were guilty or innocent?

By Judge Cox: Were you tried in the State Court?

[Tr. 312] By the Witness: Only the Court in Hattiesburg Circuit Court I think it was and this is the second time I have appeared.

By Judge Rives: I am not talking about this case now. I am talking about the criminal case brought against you, the case for which you were arrested?

By the Witness: Yes.

By Judge Rives: You put up a \$500.00 bail bond?

By the Witness: That's correct.

By Judge Rives: Has that bail bond been returned to you?

By the Witness: Not to my knowledge.

By Judge Rives: You know whether you got your \$500.00 back don't you?

By the Witness: Yes.

By Judge Rives: You did not get it back?

By the Witness: Not yet.

[Tr. 313] By Judge Rives: And has your case been removed to the Federal Court or what has happened to it?

By the Witness: Its been removed to the Federal Court.

By Judge Rives: You have not been tried?

By the Witness: I have not.

By Judge Rives: Now you stayed in jail for three or four days?

By the Witness: That's correct.

By Judge Rives: Since you have been out how much

picketing has there been in support of voter voting registration?

By the Witness: Limited amount since then.

By Judge Rives: What do you mean by limited amounts? Did it continue on until this May 18th arrest?

By the Witness: Uh there were many days that there was no picketing at all.

By Judge Rives: But there were no arrests between April [Tr. 314] 11th and May 18th?

By the Witness: I don't think so.

By Judge Rives: As far as you know?

By the Witness: As far as I know.

By Judge Rives: Or at least between April 12th and May 18th. Now since May 18th has there continued to be any picketing or not?

By the Witness: May 18th I don't think so.

By Mr. Wells: Let me ask him just this if the Court please.

Q. Counsel asked you about the effect on the drive, Reverend Cameron. Don't you know as a matter of fact that since May of 1964 that more negroes have registered in Forrest County to vote than had registered for two or three years prior to that time?

A. There it is true that there are more negroes registered now.

Q. That wasn't my question. Since May 1964—

A. (Interrupting) Yes.

Q. (Continuing) when this last May the 18th when this [Tr. 315] last arrest was made more negroes have registered in Forrest County from that till now than had been registered prior to that date, isn't that correct?

A. That's correct more negroes were.

Q. That's right, so the rate of registration has picked up since that time *time* hasn't it?

A. That's true.

By Mr. Wells: That's all if the Court please.

By Judge Coleman: Let me ask you just a question or two. You are a qualified elector of the State of Mississippi. When did you first register to vote?

By the Witness: I am a qualified elector. I first registered in 57 or 58 in Meridian, Mississippi.

By Judge Coleman: In Lauderdale County?

By the Witness: In Lauderdale County.

By Judge Coleman: When did you register in Hattiesburg, Forrest County?

By the Witness: Oh approximately three years oh little better than two years ago I had my registration transferred [Tr. 316] from Jones County where I came from Lauderdale County. I reregistered again in Jones County and when I came back to Forrest County I had my voter registration transferred.

By Judge Coleman: So up to this time you have been a qualified elector in three counties in this state?

By the Witness: That's correct.

By Judge Coleman: Lauderdale, Jones and Forrest?

By the Witness: That's correct.

By Judge Coleman: And in 1964 yourself were a candidate for the House of Representatives from the Fifth Congressional District of Mississippi in the democratic primary?

By the Witness: That's correct.

By Judge Coleman: Did you have any difficulty or any trouble qualifying as a candidate in the democratic primary?

By the Witness: I did not have any difficulty.

[Tr. 317] By Judge Coleman: How many counties are there in the Fifth Congressional District?

By the Witness: 16 or 17.

By Judge Coleman: How many qualified electors of all races do you have in the Fifth Congressional District?

By the Witness: I was uh have not been able to secure the exact number. I have attempted to but no cooperation to secure it.

By Judge Coleman: How many votes were cast in the general election in November, 1964 in the Fifth Congressional District?

By the Witness: I do not have the actual figure that was.

By Judge Coleman: Would you think that 85,000 would be a reasonable estimate of the number of votes cast in the general election?

By the Witness: In the Fifth District?

By Judge Coleman: In the Fifth Congressional District in 1964?

[Tr. 318] By the Witness: I am not sure.

By Judge Coleman: For 16 counties?

By the Witness: I am not sure to the number that actually were cast.

By Judge Coleman: Did you make any, Jackson County is in the Fifth Congressional District isn't it?

By the Witness: Yes, it is.

By Judge Coleman: Pascagoula is the county seat?

By the Witness: That's correct.

By Judge Coleman: How many negro qualified electors to the best of your knowledge did they have in 1964 in Jackson County?

By the Witness: Well, the last time I was in the county and I asked this question I was told, did you say negroes?

By Judge Coleman: That's right negro qualified electors?

By the Witness: Uh approximately I was told there by [Tr. 319] one of the citizens better than a thousand or two thousand. I cannot say these were official.

By Judge Coleman: Harrison County in which we are now situated is also in the Fifth Congressional District isn't it?

By the Witness: That's correct.

By Judge Coleman: While you were a candidate for congress did you make any effort to ascertain how many negro qualified electors they had in 1964 in Harrison County?

By the Witness: I did not go official inquiry.

By Judge Coleman: What was the best of your judgment at the time?

By the Witness: I was told that above 2,000 were registered here.

By Judge Coleman: And there are 13 other counties in this district besides Harrison and Jackson?

By the Witness: Yes.

By Judge Coleman: 15 counties I believe in all aren't there, 16?

[Tr. 320] By the Witness: 16.

By Judge Coleman: 16 counties. Now in that primary election how many votes did you get for congress?

By the Witness: Uh 1, 171.

By Judge Coleman: You received 1,171?

By the Witness: That's correct.

By Judge Coleman: Although there were two counties

alone in the district that had as many as maybe 4,000 negroes registered to vote?

By the Witness: I think the count uh this is what I was told unofficially. I do not know the actual number registered.

By Judge Coleman: Well, all that time now you were leading this effort you say to register people to vote?

By the Witness: That's correct.

By Judge Coleman: And that was your purpose and your activity?

[Tr. 321] By the Witness: Yes sir.

By Judge Coleman: And you got arrested one time, the time you are telling us about?

By the Witness: On the picket line, yes.

By Judge Coleman: That's what I am talking about on the picket line?

By the Witness: Yes.

By Judge Coleman: Arrested only once?

By the Witness: Only once.

By Judge Coleman: Since May 18 you did not picket any more?

By the Witness: Ah I don't think so.

By Judge Coleman: Is it a fact and I do not want to ask you an unfair question at all, is it a fact that all this picketing was discontinued for the simple reason that the registrar in Forrest County was put under such an ironclad injunction as the Court found he deserved to have put on [Tr. 322] him that it was no longer any necessity for anybody to picket or to do anything else? He had no option but to register the people that were qualified did he?

By the Witness: Well, I am sure ah he had to at least attempt to follow the decision.

By Judge Coleman: Well, I mean you have kept abreast of the circumstances and the situation in Forrest County, you are one of the leaders up there and you have told us about a lot of other things you learned and of course I have appreciated hearing it but I want you to tell the Court if it isn't a fact that after May 18th of 1964 all of you knew that *the* wasn't necessary to picket or anything else any more because Mr. Lynd, the registrar, was under a severe court injunction which required him to register all of you that were qualified?

By the Witness: We knew that he was under this injunction but we were not uh aware that it was not necessary to continue the picketing.

By Judge Coleman: I will put it the other way around then. Do you know of anybody since May 18, 1964 that [Tr. 323] he has refused to register who was in fact qualified?

By the Witness: Since May?

By Judge Coleman: 18th, 1964, have you known of anybody who was qualified to register and that the registrar declined to register in violation of the injunction of the Fifth Circuit Court of Appeals and of the Southern District of Mississippi?

By the Witness: I do not know of anyone directly.

By Judge Coleman: You do not know of anyone directly? As a leader in this movement can you tell the Court how many members of the negro race have been registered in Hattiesburg since May 18th, 1964?

By the Witness: Well, I do not know from that actual date but from January, 64 approximately 3,000 now starting off with 50.

By Judge Coleman: You had 50 in January, 1964?

By the Witness: Yes.

[Tr. 324] By Judge Coleman: And then today you have 3,000?

By the Witness: Approximately, yes.

By Judge Coleman: You think that indicates that the arrests of these people in April scared folks out of attempting to register?

By the Witness: It did both for the people so many people would not uh go up and still have not gone up. As you know we have over 9,000 qualified negroes in Forrest County now that's still quite a small group registered even at that number uh with all of the efforts and some still do have a fear of going.

By Judge Coleman: Well, you feel that under our law and practices that registration is compulsory and that everybody has to go whether he wants to or not, does he not have a right to exercise his option not to go?

By the Witness: He has a right.

By Judge Coleman: You have read the recent publicity in Mississippi that there are multiplied upon multiplied thousands of white citizens who have never bothered to

[Tr. 325] register in this state?

By the Witness: That's true.

By Judge Coleman: And the very fact that a man doesn't go to register doesn't indicate anything more than he just simply hasn't wanted to go register does it. You want to translate it it seems to me into some kind of ipso facto or prima facie fear but moving it over to the white side of the ledger do you think those people have refused to go register because they are afraid of something?

By the witness: Well, I have heard several white people say that they were afraid to go too.

By Judge Coleman: What was their reason?

By the Witness: Because they didn't know what was going to happen.

By Judge Coleman: Why?

By the Witness: Well, the phrases used was the agitators were there and the negroes were there and they didn't know what to expect and I have had several in Forrest County [Tr. 326] tell me that they were afraid to go.

By Judge Coleman: You think that situation exists throughout the State of Mississippi?

By the Witness: I am not sure about throughout the state but I wouldn't be surprised.

By Judge Coleman: So you're now telling the Court that it is a fact that there are white people in Mississippi who are afraid to register?

By the Witness: There may be I am sure. This particular area this is the only one that I have had direct contact with.

By Judge Coleman: So we have everything just shot through and through with fear?

By the Witness: Well, it is a very real thing. I was born there and I really think I understand it.

By Judge Coleman: But nevertheless its been 3,000 of them registered since January of 64?

By the Witness: That's true.

[Tr. 327] By Judge Coleman: Now with reference to those who attempt to register in Forrest County at this time before Registrar Lynd does he impose any literacy test of any kind whatever or is he obeying, I am talking about so far as you know as a leader in this movement does he obey the requirements of the Federal voter law that no literacy test shall be imposed?

By the Witness: Ah the only thing that I know that he

is doing now is that he uh does not require any interpretation of the writing of the constitution now I don't think. I have not had any recent contact with Mr. Lynd.

By Judge Coleman: You mean the situation is so improved in recent weeks and months that you have lost touch with what's going on in the registrar's office?

By the Witness: It's not because I have lost interest but my work has been stepped up and I have added responsibilities and I have not checked in his office recently on this matter.

By Judge Coleman: Thank you.

[Tr. 328] By Judge Rives: Anything further, gentlemen?

By Mr. Smith: Yes, I do, Your Honor, one or two questions brought up by the previous questioning.

Q. Reverend, what efforts were made, you say that there was some fear generated by these arrests, what efforts were made after the arrests to do something about this? Did the ministers unit there do anything in this regard?

A. Uh you mean after the arrest on the 9th?

Q. Yes, on the 10th rather of April. You say that this arrest generated some fear in the minds or hearts of the people that were involved in the voter registration unit?

A. Yes.

Q. Could you please tell us what steps were taken by the ministers unit and the COFO unit to do something about this, what did you do, if anything?

A. Yes, an effort one effort was made was to still try to get the uh negro community to go up and register that some steps were being made to help relieve the burden or the fear of going to the court house and uh to lend uh moral persuasion as a responsibility of a citizen to become a registered voter and uh right at my fingertips now ah [Tr. 329] there may be others that do not come to me fresh.

Q. Were you present when Mr. Lynd was accused by the Federal Government of being in violation or contempt of the injunction that the Justice uh Judge Coleman has just spoken to us about?

A. This was held in Jackson or Hattiesburg?

Q. Hattiesburg?

A. I was part of it, I was present part of the trial.

Q. This was subsequent to the April 10th arrest was it not?

A. That's correct.

By Mr. Smith: That's all.

By Mr. Wells: No questions.

(Witness excused.)

By Mr. Smith: Mrs. Connor, C o n n o r.

Peggy Jean Connor called as a witness for and on behalf of Plaintiffs, was sworn and testified as follows:

Direct examination.

By Mr. Rosenthal:

Q. Will you state your name to the Court?

[Tr. 330] A. Mrs. Peggy Jean Connor.

Q. And your residence?

A. 921 Mobile Street, Hattiesburg.

Q. And your age?

A. I am 32 years old.

Q. And your race?

A. I beg pardon.

Q. Your race for the record?

A. Negro.

Q. Have you been active in the civil rights movement uh voter registration program in Forrest County, Mississippi?

A. Yes, I have.

Q. Were you arrested in a march or picket at the Forrest County Court House on April the 10th, 1964?

A. I was.

Q. Was this the first march that had taken place in Forrest County, Mississippi?

A. No. The first march took place on January 22nd of that year.

Q. 1964?

A. That was the freedom day of 1964.

Q. How many people took part in this march?

A. Oh approximately 200 I guess.

Q. About 200. Where was this march at?

[Tr. 331] A. This was in front of the court house, in fact it wasn't just in front, it went around three streets, it was from Main Street to Eaton to Forrest all the way around

it was a line that was uh while one line uh while one section was going another section was coming. It was just a continuous thing going around three streets.

Q. And you were walking on the sidewalks at this time?

A. On the sidewalk.

Q. And was anyone arrested at this at this march?

A. Not participating in the march it wasn't, it was no arrest.

Q. Was the next march on April the 10th, 1964?

A. No. We had marches every day every week day Monday through Saturday.

Q. Now every six days a week from January the 22nd till April the 10th, 1964 was a march on the County Court House in Forrest County, Mississippi?

A. That's right.

Q. What did the county official and the city officials in Forrest and Hattiesburg the county officials in Forrest County, Mississippi do in regards to these marches?

A. You mean every day up until April?

Q. I'm talking about did they mark off any kind of space [Tr. 332] place or anything for you to march?

A. The first day for the first few days probably a week we did have a march going off from all three streets and then uh we were very obedient after that day one day we went back and the police had walked up to the corner of Forrest and Eaton Street and uh they told us they said turn around here, then we would turn around at the end of Forrest and Eaton Street and then go back and then they uh they broke the march up from crossing the front of the court house uh you would go from the furniture store to the front steps of the court house on the right hand side, you would go from the front steps on the left hand side of the court house back around to uh Forrest Street and they kept it going like that and then after a few days they stopped us from going on the right hand side we just had the left hand side of the court house to picket. Well, after that they stopped us from going all the way from Forrest from Eaton to Forrest and they came up uh just a little bit below the walk behind the flag pole. Well, we had just a little corner then you went from Main Street to Eaton, up a step behind the flag pole, back down and around and we did that until we were arrested April the 10th.

[Tr. 333] Q. So what you are telling the Court is the city officials kept and the county officials kept narrowing and narrowing and narrowing your marching area until you finally had one small area to march in?

A. That's right.

Q. Now how many people usually took place in these marches? Was it usually ten?

A. Well, sometime we would have a small number and then again we would have large numbers. Sometimes it would be 10 or 12 and then uh well like if maybe we got a word that they planned to stop the picket line in fact a few days after the picket line started they issued a temporary injunction to stop the picket line and we were looking for it to be made permanent any day and uh the day it was coming up in County Court we would make sure that we have a full line you know a quota on the picket line and in fact one day uh that we thought the case was coming up in County Court uh Reverend Grady and I tried to attend County Court in fact we went in and uh the Judge asked us what did we come in for and so I was the spokesman and I told him that we had uh we thought that the hearing was coming up to make the uh picket line the injunction for the picket line permanent and we came to sit in on the [Tr. 334] hearing so he told us he didn't know anything about it and uh we have to see our lawyer and told us that we could go, in fact it was a gentleman that escorted us to the door but uh and we were left.

Q. Let me ask you this. Wasn't on one of these prior marches prior to April the 10th didn't the number it wasn't unusual to have 20 people out there was it?

A. No.

Q. Wasn't unusual to have more than 20?

A. No.

Q. On one of these marches was uh what you would actually call a large picket demonstration isn't that correct?

A. That's right.

Q. Now then we have had a lot of discussion here about the area march. Do you recognize this?

A. I do.

By Mr. Rosenthal: I would like to have it marked for.

By the Witness: I beg your pardon.

By Mr. Rosenthal: Uh marked as an exhibit.

By Judge Rives: You want to have it marked as an exhibit?

[Tr. 335] By Mr. Rosenthal: Yes, after she uh identifies it.

Q. Will you please identify the drawing?

A. Uh this is the uh the route we took.

Q. Well, what does that picture depict?

A. I beg pardon.

Q. What does the picture depict?

A. Uh its the court house. This is the court house and this is the corner section of the court house where we picketed.

Q. Yes. OK will you show the Court the *the* line of march on April the 10th, 1964?

By Judge Rives: Is that an accurate picture of the court house?

By the Witness: No, this is a sketch that we drew.

By Judge Rives: Is it an accurate sketch look fairly like the court house is?

By Mr. Dukes: No.

By the Witness: Well, its just a sketch.

By Mr. Wells: Its completely out of proportion.

[Tr. 336] By Mr. Rosenthal: We will withdraw it.

By Mr. Wells: We object to it.

By Mr. Rosenthal: OK, we will withdraw it, Your Honor.

By Mr. Wells: Its completely out of proportion.

By the Witness: But you can't see the walk.

By Mr. Rosenthal: It doesn't matter.

Q. Uh I just have a few questions in regard to the march on April the 10th. What warning did the Sheriff give you before arresting you?

A. On April the 10th the Sheriff didn't give us any warning. We picketed I guess about three times maybe I don't know exactly how many times we went around this little section here but I was the last one there and he was standing at the corner of the court house and he say break this line right there with that preacher at that preacher, said preacher you go that way, that made me be the last one in the line to go make my fourth turn around and I came back but he never said we were under arrest, he just said preacher you go that way and uh well after we were jailed.

[Tr. 337] he brought affidavits and told us what we were arrested for.

Q. And did they ever tell you to disperse, go home?

A. (No answer.)

Q. They didn't tell you you are going to be arrested if you don't leave?

A. (No answer.)

Q. What's happened what was the result in terms of later picketing as a result of the group of people being arrested on April the 10th?

A. I don't understand.

Q. What happened to later pickets, did you continue to have these large pickets which you have described picket lines which you have described to us after April the 10th?

A. Well, we had some picket you know after than but it was small numbers, it was 9, 10 or 2 or 3 and finally was down to about 3 and did arrest those 3 that was in May that was the last of the arrests.

Q. And—

A. (Interrupting) That was after well two of the people that got arrested had been in jail before with the first group that was arrested on April the 10th and that was the last of the arrests for picketing.

Q. Was that the last of the picket lines?

[Tr. 338] A. What when the last people were arrested?

Q. Right.

A. That's right.

Q. Nobody else picketed after that?

A. Not to my knowledge.

Q. How long were you in jail?

A. I was in jail from Friday to Thursday.

Q. Friday to Thursday and you were released on bond?

A. That's right.

Q. How much was your bond?

A. We were all of us were released on \$1,000.00 property bond except the ministers they paid cash bonds.

Q. And how much was their cash bonds?

A. Their cash bonds were \$500.00.

Q. Do you know what's happened to your criminal prosecution that was commenced the action that the State what the State arrested you for do you know what's happened to that charge?

A. (No answer.)

Q. Do you know whether or not that charge was removed to the United States District Court?

A. It was removed to the United States District Court.

Q. And do you know where that court is pending uh where that case is pending now?

A. Its pending.

[Tr. 339] Q. As far as you know its pending in the District Court?

A. That's right.

By Mr. Rosenthal: That's all.

By Judge Cox: You put up a \$1,000.00 property bond you say?

A. Uh I didn't put it up but some of the people there in Hattiesburg put up property bond for me it was \$1,000.00.

By Judge Cox: Did you see the bond?

By the Witness: (No answer.)

By Judge Cox: Did you see the bond and it was \$1,000.00?

By the Witness: \$1,000.00 property.

By Judge Cox: Could you have gotten out with a \$500.00 cash bond if you had given \$500.00

By the Witness: That's right.

By Judge Cox: You could have.

[Tr. 340] By the Witness: If you had \$500.00 cash bond or \$1,000.00 property bond.

By Judge Cox: You could have put up \$500.00 cash and been released on a cash bond?

By the Witness: If I had had it.

By Judge Cox: If you had \$500.00?

By the Witness: That's right.

By Judge Cox: All right.

Cross-examination.

By Mr. Wells:

Q. Mrs. Connor, I believe you said that back on the 22nd of January, 64 is when the movement or the picketing started, is that right?

A. That's right.

Q. The first demonstration you had was I believe you said around 2 or 300 people?

A. No, I didn't say 2 or 3. I said approximately 200.

Q. Approximately 200 people?

A. That's right.

Q. That formed a line on the sidewalk on three sides of [Tr. 341] the court house?

A. That's right.

Q. And that was done repeated several time was it not?

A. For several times.

Q. For several days that same number?

A. Sure.

Q. And finally because in other words what was happening is the picket line at that time was actually occupying the sidewalk on three sides of the court house wasn't it?

A. That's right.

Q. Complete sides of the court house so as a result of that situation for a while the police department set up some barricades there by the court house and fixed an area there where people could picket didn't they?

A. They set up the barrier when they uh made the area smaller.

Q. I understand. They——

A. (Interrupting) The police were the barrier.

Q. I understand but later on they set aside this area there in the corner of the court yard where you all could go ahead and picket, is that right?

A. That's right.

Q. And for quite some time there were pickets there every day weren't there?

[Tr. 342] A. That's right.

Q. Now usually those picket lines there ran anywhere from down to about 6 some days up to 12 to 15 on other days didn't it?

A. 6 and some days quite a few more than 12 or 14 or 15.

Q. Well, how many would you say?

A. Well, some days we had 30 about 38 or 39.

Q. What month would that have been in?

A. I couldn't tell you exactly or if you can tell me when the hearing was called for the permanent injunction I can tell you the month.

Q. I don't know a thing in the world about the permanent injunction. That was a suit brought by the City of Hattiesburg in the Chancery Court wasn't it to get out an injunction against mass picketing there in the city?

A. That's right.

Q. That didn't have nothing to do with the court house at all did it?

A. Say what?

Q. Didn't have anything to do with the court house at all did it?

A. I don't understand what you are talking about.

Q. The suit where the injunction you are talking about was brought by the City of Hattiesburg before the Chancery [Tr. 343] Court to regulate picketing on the streets of Hattiesburg wasn't it, it was not brought by any of the county authorities involving the court house?

A. I don't know. All I know this hearing was held in the County Court.

Q. It was held in the Chancery Court wasn't it by the Chancellor?

A. This was Judge Harlson or Horlsen or Haralson or whatever his name court.

Q. Went to the County Judge to get an injunction issued?

A. No, that's the uh the court we went to where this permanent injunction was supposed to have been made permanent.

Q. Where you thought it was?

A. That's right.

Q. And Judge Haralson told you he didn't know anything about it?

A. No, he say he said it wasn't coming up in here today, he said well it's not in here today said you will have to see your lawyer.

Q. Judge Haralson is what the County Judge?

A. I guess so.

Q. Now that was back when?

A. I don't know.

Q. Wasn't that back in February or March?

[Tr. 344] A. I really don't know.

Q. You don't know. Well, let's bring it down to somewhere around the 1st of April (we will say picketing was going on there usually ranged from about anywhere from 6 to maybe 12 or 14 at the most from the 1st of April up until the 10th didn't it?

A. I really couldn't say.

Q. You don't know?

A. (No answer.)

Q. Were you in the group on Thursday, April the 9th, 1964, when the officer stopped and explained to you and read to you a new law that had been passed involving interfering with entrances to the court house?

A. I wasn't there when this was done. I had been there earlier that day.

Q. But you were not there?

A. But I wasn't there.

Q. When the Sheriff talked to the crowd there? You did go there Friday morning?

A. That's right.

Q. April the 10th?

A. That's right.

Q. And you say that you made about what about four rounds?

[Tr. 345] A. I made about four rounds but I think the other group made about three rounds. I made another round because I was at the tail he broke the line behind me so that made the minister that he broke the line with to go on to the Forrest County Jail and I had to make another round to come back around.

Q. You didn't make that round by yourself did you?

A. No, it was some in front of me.

Q. That's right, in other words one group your group the group you were in went around about four times?

A. Well, yes.

Q. Is that right?

A. That's right.

Q. Now there was about total of about 40 people there that morning wasn't it in that picket line?

A. I think so.

Q. In other words that's the largest group you had had for some several weeks wasn't it?

A. Well, we had about 30 something.

Q. You hadn't had that many in April had you?

A. Well, I just couldn't say but I do know we had had large numbers.

Q. But that was back further than, that was earlier wasn't it?

A. No, I mean since they while we were walking in this [Tr. 346] small area.

Q. But that was prior to the 1st of April wasn't it?

A. Well, I couldn't say.

Q. You couldn't say?

A. (No answer.)

Q. Now after this arrest was made on Friday from then until about the 18th of May there was still continued people continued to picket there in front of the court house in that area didn't they?

A. That's right.

Q. Did you go back and picket some more?

A. No, I didn't go back any more because uh two fellows who had gone with us the first time went back and picketed and they were arrested again and their bonds were set at \$1,500.00 and I couldn't see—

Q. (Interrupting) That was—

By Mr. Smith: I object. Now I think that the witness ought to be allowed to answer the question fully.

By Mr. Wells: I'm sorry. I thought she was finished.

By Judge Rives. Go ahead.

By the Witness: Their bonds were set at \$1,500.00 each [Tr. 347] and uh I couldn't see raising \$1,500.00 you know.

By Mr. Wells:

Q. Those were the arrests were made on the 18th of May weren't they?

A. I really don't know.

Q. As a matter of fact, Mrs. Connor, from the 11th day of April until the 18th day of May there were no arrests made were they?

A. Say from what now?

Q. From the 11th of April, now the big arrest was on the 10th, Friday, a few more on Saturday, the 11th, now from then until the 18th of May there were no arrests made there at all were they?

A. I really couldn't say.

Q. You don't know whether there were or not and these boys that you say went back and got arrested the second time they were in the group that were arrested on the 18th of May weren't they?

A. I really don't know what date.

Q. You just don't know?

A. (No answer.)

By Mr. Wells: Court please, I have no further questions of this witness.

[Tr. 348] By Judge Coleman: Mrs. Connor, are you a native of Hattiesburg?

By the Witness: I am.

By Judge Coleman: Born and raised there?

By the Witness: That's right.

By Judge Coleman: How much education formal education do you have?

By the Witness: High school education.

By Judge Coleman: When did you finish high school?

By the Witness: Uh in 1950.

By Judge Coleman: Are you a registered voter?

By the Witness: I am.

By Judge Coleman: When did you register to vote?

By the Witness: I became registered in January.

By Judge Coleman: In other words you were registered [Tr. 349] along about the time the picketing and marching that we have been talking about started?

By the Witness: That's right.

By Judge Coleman: I believe that's all.

By Mr. Rosenthal: Uh would you—

By Judge Rives: You have any further questions?

By Mr. Rosenthal: Yes sir, one further question.

Q. Would you have uh you have been one of the leaders have you not in the voter registration project in Hattiesburg and uh you canvassed the neighborhood in order uh to get people to go down to attempt to register?

A. Yes, I do.

Q. On or about the date recently after April the 10th, 1964 what was the effect of these arrests which had taken place on April the 10th?

A. I don't quite understand what you mean.

Q. Did you encounter any difficulties in getting people to go down to Mr. Lund's office and attempting to register? [Tr. 350] A. Yes, really did. The people really were uh some were afraid to go uh they felt when picket line was up there it gave them courage to go in fact uh I had taken some up I would take some up to uh try to register and uh I would tell them that I would picket while they were in there I would give them some kind of support.

Q. And what happened after the arrests?

A. Well, it it just fell off the people just wouldn't wasn't responding.

By Judge Rives: Do you know whether were just about no people registered were negroes in early 1964 only about 50 and at the end of 1964 there were about 3,000 weren't there?

By the Witness: 64?

By Judge Rives: Or do you know that?

By the Witness: At the end of 64?

By Judge Rives: Yes.

By the Witness: I didn't know that.

[Tr. 351] By Judge Rives: You don't know that?

By the Witness: At the end of 64?

By Judge Rives: You don't know when these people got registered?

By the Witness: 3,000?

By Judge Rives: Yes, there has been some testimony here about 3,000 having registered—

By the Witness: (Interrupting) in 64?

By Judge Rives: Yes.

By the Witness: I don't know.

By Judge Cox: Since 64.

By Judge Rives: Since January 1st, 1964?

By the Witness: Oh since 64?

By Judge Rives: Since January 1st, 1964?

[Tr. 352] By the Witness: That's right.

By Judge Rives: But you say the registration fell off after these arrests?

By the Witness: It did at that particular time.

By Judge Coleman: Were you a paid worker during this time?

By the Witness: All my work is free.

By Judge Coleman: All your work is free. I notice you stated that you lived on Mobile Street?

By the Witness: I do.

By Judge Coleman: And the COFO headquarters were on Mobile Street weren't they?

By the Witness: That's right.

By Judge Coleman: Did you live in the COFO headquarters?

By the Witness: No, COFO headquarters is 507 Mobile Street.

[Tr. 353] By Judge Coleman: And your address?

By the Witness: And my residence is 921 Mobile Street.

By Judge Coleman: About four or five blocks away but on the same street?

By the Witness: That's right.

By Judge Coleman: How long has it been since you have been in the registrar's office at Hattiesburg for the purpose of observing anybody registering?

By the Witness: Don't nobody go in the registrar's office to observe somebody registering.

By Judge Coleman: You haven't been in at all?

By the Witness: Not to observe nobody register.

By Judge Coleman: So what you have done has been outside the court house and not inside?

By the Witness: That's right. I go to the door and they [Tr. 354] go in but I didn't stay in, you couldn't stay in, you probably get arrested.

By Judge Coleman: How long has that been true?

By the Witness: That was in 64.

By Judge Coleman: Well, in the year 65 which has about expired do those conditions still exist?

By the Witness: I haven't been up there.

By Judge Coleman: You haven't been up there. Have you been engaged in voter registration work in 65?

By the Witness: I have.

By Judge Coleman: Since January, 65?

By the Witness: That's this year I have.

By Judge Coleman: Are you engaged in that work at this time?

By the Witness: Well, to a certain extent but not as much.

[Tr. 355] By Judge Coleman: Why would you say that your efforts apparently have been reduced over what they used to be?

By the Witness: Well, I've had to work a little bit more on my job one thing and I have see I teach citizenship classes and I haven't had any classes lately.

By Judge Rives: Any other questions?

By Mr. Wells: Yes sir, if the Court please.

Q. Mrs. Connor, can you name me one single person who has ever been arrested in the registrar's office?

A. No, I don't know of anyone being arrested in the register's office.

Q. Then why did you say if you went in there you would probably get arrested?

A. Well, they tell you to get out and if you don't get out you will be arrested.

Q. Has anybody ever been arrested in there?

A. Well, I don't know. Not that I know of but I do know you can be.

Q. In other words they won't let you go in there and sit by the person taking a test or wouldn't when they were giving those tests would they?

A. No cause don't nobody sit, they have to stand and [Tr. 356] take the test.

Q. At a counter?

A. That's right.

Q. But lot of people standing around there watching them they are actually in the way aren't they?

A. Huh it doesn't be that many in there.

Q. But nobody has ever been arrested?

A. Not that I know of.

Q. Do you know how many negroes are registered in Forrest County now.

A. I don't know of any negroes.

Q. Beg pardon.

A. I don't know of any negroes.

Q. You don't know any negroes?

A. Knee grows, you said do I know of any negroes?

Q. I said negroes. If I didn't pronounce it to suit you I'm sorry. Do you know of any colored people, Mrs. Connor, who are registered, I mean do you know how many colored people are registered or negroes, I don't intend to mispronounce it, that's just my way of doing it, I certainly don't do it to be ugly or officious I want you to understand that?

A. I don't know how many. We have tried to find out from the Circuit Clerk but he could not ever give us the number.

[Tr. 357] Q. Don't you know that there are approximately 3,000 registered there now?

A. That's what I hear.

Q. That's what you understand and in January of 64 you started off with 50?

A. That's right.

Q. So since April of 64 the registration itself has picked up instead of falling off hasn't it?

A. Well, this came after you know uh Mr. Lynd uh has been ordered to uh you know make the test simpler.

Q. You may explain but here is the question—

A. (Interrupting) And has also been ordered to put some on the registry.

Q. That is not what I asked you young lady. As a matter of fact the registration in Forrest County among negroes has picked up and increased since April of 64 rather than decreased hasn't it?

A. Yes.

By Mr. Wells. No further questions if the Court please.

By Judge Rives: Mrs. Connor, you still have registration by Mr. Lynd, you don't have any federal registrars?

By the Witness: No.

[Tr. 358] By Judge Rives: Under the new voting law?

By Mr. Wells: That's right sir, no federal registrars.

(Witness excused.)

By Mr. Smith: Mr. Gould. Mr. Gould is to be our last witness, Your Honor.

John H. Gould called as a witness for and on behalf of Plaintiffs, was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. Would you state your name to the Court please?

A. My name is John H. Gould.

Q. And your age?

A. Age 57.

Q. And are you employed at the present time?

A. No, I'm not.

Q. Are you retired?

A. No, I'm disabled.

Q. And your previous work was what please?

A. Last job at Hattiesburg American.

Q. Did you ever work for the railroad?

A. I did.

Q. For how many years?

[Tr. 359] A. Pullman service oh about seven months.

Q. I see. Are you a native of Hattiesburg, Forrest County?

A. I am.

Q. Sir?

A. I am.

Q. And you are of the negro race is that correct?

A. I am.

Q. Have you ever been involved in voter registration movements in Hattiesburg?

A. I have.

Q. Mr. Gould?

A. I have.

Q. When was your earliest attempt at registering negroes to vote in Hattiesburg?

A. My earliest attempt was in the last forties.

Q. And what group or organization was involved in that effort?

A. It was the city club by the name of the committee of 400 or 500.

Q. Are you familiar with the—

A. (Interrupting) 100 at least the committee of 100.

Q. Committee of 100?

A. That's right.

Q. Are you a member of the NAACP?

[Tr. 360] A. Not at present.

Q. Have you been before?

A. I have.

Q. Have you been familiar with the voter registration drives in Forrest County from that time forward to date?

A. I have.

Q. You know approximately how many negroes are now registered to vote in Forrest County?

A. No, not exactly, matter of fact I would say somewhere in the neighborhood of maybe about 800 maybe.

Q. 800?

A. (No answer.)

Q. How many negroes were registered to vote in Forrest County as of say the 1st of January, 1964 before the COFO drive started?

A. Oh somewhere between 20 and 25 maybe.

Q. Now why was that such a low figure?

A. Because we were denied the right to register.

By Mr. Wells: We are going to object to that if the Court please.

By Judge Rives: Sustain the objection.

By Mr. Smith:

Q. Were you a registered voter at that time?

[Tr. 361] A. How is that?

Q. Were you one of those 25 or 30?

A. Well, no, not considered.

Q. Did you try to register and vote?

A. I did.

Q. Were you accepted?

A. I have registered previous to that.

Q. You had registered before?

A. (No answer.)

Q. Are you now a registered voter?

A. I am.

Q. When did you register this last time?

A. April the 20th, 1964.

Q. Now you are aware of the arrests that took place on April the 10th, 1964 and May 18th, 1964 is that correct?

A. I am.

Q. What was the effect of those arrests on the negro community in so far as voter registration was concerned, Mr. Gould?

A. Well, it might say that it uh I would say it uh lowered the moral.

By Mr. Wells: Pardon me just a minute. If the Court please, we are going to object to this unless and until it is [Tr. 362] shown that he had been one of the people who have been organizing these picket lines and so forth.

By Judge Rives: I have sustained that objection once or twice but you came pretty close to letting him answer it this time. I don't think that he could answer what effect would be a matter of conclusion. I will sustain the objection. You can tell the facts from which we can draw our conclusions.

By Mr. Smith: Very well.

Q. Mr. Gould, did anyone after these arrests in the negro community there in Hattiesburg tell you that they

were afraid to go down and attempt to register at the court house?

By Mr. Wells: Just a minute now.

By the Witness: They did.

By Mr. Wells: Just a minute. We object to that if the Court please as calling for conversation from some other person who is not available to be cross examined to find out what the circumstances are and—

[Tr. 363] By Mr. Smith: (Interrupting) I am not submitting the answer as the truth. I am simply submitting the—

By Judge Rives: Overrule the objection.

By Mr. Smith:

Q. You may answer the question if you recall it.

A. Yes. Its on several occasions people *people* told me they were afraid to go down because they began to pick them up down there the people that were demonstrating around the court house.

Q. Did you go down and ever take a look at those picket lines that were around the court house?

A. I did.

Q. Were you interested and involved in this effort to register the negro citizens of Forrest County?

A. I was interested in the registration.

Q. This previous witness is that your daughter?

A. She is.

Q. After the arrests of April the 10th and May the 18th, 1964 what happened to the picket lines in front of the court house?

A. They all disappeared.

Q. Now before the 10th of April, 1964, had there been any arrests of persons on the picket lines for picketing?

[Tr. 364] A. Had not.

Q. Now, Mr. Gould, I am going to ask you since April 10th, 1964 have you lived in Hattiesburg continuously?

A. I have.

Q. Have you observed the uh any parades or marches in Hattiesburg that have taken place since that time?

A. Yes, I have observed high school and college parades.

Q. Have these parades ever blocked the streets of Hattiesburg?

A. They have.

Q. Have they ever resulted in any have you watched them yourself?

A. I have.

Q. Have you ever seen anyone arrested in these parades for blocking the streets or the sidewalks?

A. I have not.

Q. Have they ever passed in front of any public building such as the city hall or the county court house?

A. They have.

Q. Were there ever any arrests of persons blocking the entrances or exits of those court houses at that time?

A. Not that I know of.

Q. When those parades occurred in the vicinity of these public buildings were in fact the entrances and exits of those buildings available to the public?

[Tr. 365] A. They was not at times.

Q. Were there ever any arrests at those times when they were not available?

A. Was not.

Q. Is there to be a public parade in Hattiesburg tomorrow?

A. It is.

Q. What is the occasion of that?

A. Homecoming parade for Mississippi Southern.

Q. Did they have one last year?

A. They did.

Q. Did they block off the streets in Hattiesburg?

A. They blocked off the streets the route of the parade.

Q. Did the parade pass in front of the court house?

A. It did.

Q. Was in during the daylight hours?

A. During the daylight hours.

Q. When the court house was normally open for business?

A. Normally open for business.

Q. Did it keep people from being able to cross the street from the Sears Roebuck store to the court house?

A. It did.

Q. Do they have police lines holding the people back?

A. They didn't have line but they had police stationed [Tr. 366] at different places.

By Mr. Smith: I see. That's all. I tender the witness, Your Honor.

Cross-examination.

By Mr. Wells:

Q. Gould, do you know that those parades the type of parades you are talking about for school and so forth pre-arrangements are made with the city and parade permit is gotten for a parade at a certain specific time?

A. I do not.

Q. That's true isn't it?

A. I don't know.

Q. Those people are not out there demonstrating or picketing, they are parading aren't they?

A. They are parading.

Q. They are parading. Now you say you have been very interested in the voter registration drive?

A. I have.

Q. And you said prior to the beginning of COFO activities in January you had about 25 registered?

A. Best of my knowledge, yes.

Q. Is Reverend Cameron pretty he keeps up with it pretty closely himself doesn't he?

[Tr. 367] A. I feel so.

Q. And so your daughter does?

A. I think so.

Q. Now you told the Court you understand there is about 800 registered now?

A. I say I feel like it but I don't know because I don't have no way of checking the registration book.

Q. As a matter of fact it's nearly 3,000 are there?

A. (No answer.)

Q. Who would be in a better position to know that, you or Reverend Cameron, or you or your daughter?

A. Probably Mr. Lynd would be in a better position.

Q. I said who would be in a better position to know it you or Reverend Cameron?

A. I don't know.

Q. How about you or your daughter?

A. I don't know.

Q. I see. You say the thing fell off after the arrests were made?

A. It did.

Q. What was it fell off?

A. The registration fell off.

Q. Beg pardon?

A. Taking of test for registration.

Q. Now, Mr. Gould, as a matter of fact don't you know [Tr. 368] that there have been more people more negroes registered in Forrest County since May the 18th, 1964 than there had been registered prior to May the 18th, 1964?

A. I will agree to you with that but I will tell you the reason that.

Q. I'm not—

A. (Interrupting) Its on account of the court decision on account of the court decision that was handed down by Judge Cox.

Q. Regardless of—

By Mr. Smith: Your Honor, I am going to object. I think the witness is entitled to complete his answer.

By Mr. Wells: I'm sorry, I thought he had finished.

Q. Have you finished?

By Judge Rives: The evidence is already in on account of the court decision.

By Mr. Wells:

Q. Have you finished?

A. On account of the court decision.

Q. I am not asking the reason for it. What you said to counsel was that voter and me that voter registration has [Tr. 369] fallen off since April.

A. It fallen off that space of time from the time that the arrests of those people from picketing around the court house until this decision was handed down by Judge Cox and Judge Mize, Judge Cox.

Q. When was that decision handed down?

A. If I make no mistake it was in June.

Q. Of when?

A. Of this year, June or July of this year.

Q. And you mean to tell me that these 3,000 people or better than 2,500 have all registered since that time?

A. I don't know anything about 3,000.

Q. When did you register?

A. The last time on April the 20th, 1964.

Q. You had been registered prior to that time?

A. I have.

Q. Where?

A. Forrest County.

Q. When did you first register?

A. Middle thirties, 1930s.

Q. And why was it you reregistered?

A. I was dropped from the roll.

Q. And you registered last when?

A. April the 30th, 1964.

Q. That was April 30th?

[Tr. 370] A. I will show you just a second.

By Judge Coleman: That's in the record he said April 20th.

By Mr. Wells:

Q. That's 10 days after these arrests on the 10th isn't it?

A. That's right.

By Mr. Wells: I have no further questions of this witness if the Court please.

By Judge Coleman: Were you dropped from the rolls for failing to pay your poll tax?

By the Witness: No, I was not.

By Judge Coleman: Did they order a new registration?

By the Witness: They purged the rolls. They purged the rolls and I was left off the registration.

By Judge Coleman: When did that happen?

By the Witness: That was in the 50s they purged the rolls.

By Mr. Wells: Judge, I think I can explain. There was [Tr. 371] a reregistration in the county.

By the Witness: I wouldn't know the exact date. During that time Mr. Cox was Circuit Clerk.

By Mr. Wells: I think it was in 1950, Judge, along about that time.

By Judge Cox: 49.

By Mr. Wells: 49 there was a reregistration in the county.

(Witnessed excused.)

By Mr. Smith: Subject to the right of rebuttal, Your Honor, that's the case of plaintiffs. Oh we would at this point however like to ask the Court to please take judicial notice of the decisions of the Southern District Mississippi Federal Court and the Court of Appeals for the Fifth Circuit of the cases of Theron Lynd in re: Theron Lynd.

By Judge Rives: The Court will take judicial notice of those cases.

By Mr. Smith: Thank you, Your Honor.

By Judge Cox: Actual and judicial.
[Tr. 372] (Plaintiffs Rest.)

(Court recessed at 3:10 P.M. until 3:35 P.M.)

By Mr. Wells: If the Court please, we call Mr. James Dukes.

James Dukes called as a witness for and on behalf of Defendants, was sworn and testified as follows:

Direct examination.

By Mr. Wells:

Q. Your name is James Dukes is it?

A. That is correct.

Q. Mr. Dukes, where do you live?

A. Hattiesburg, Forrest County, State of Mississippi.

Q. What is your official position with Forrest County?

A. County Prosecuting Attorney.

Q. How long have you held that office?

A. Since January 6th, 1964.

Q. Prior to that time were you a practicing attorney in Hattiesburg?

A. I was.

Q. Mr. Dukes, in order that picture of the court house there might be more clearly did you cause some pictures to be made there in the court house recently showing the situation?

A. I did.

[Tr. 373] Q. Is the area there when these pictures were made without people there the same as it was back in April of 1964?

A. Identical.

Q. First I hand you—

By Judge Coleman: Let me interrupt. Do you gentlemen for the plaintiff have any objection to the—

By Mr. Smith: (Interrupting) No sir, Your Honor, for the record I have looked at the pictures, they have been shown to me by Mr. Wells, we have no objection.

By Judge Coleman: Let them come in and save all the time.

By Mr. Wells: Then I offer this picture if the Court please as Exhibit 1, Plaintiff's Exhibit 1.

By Judge Coleman: Defendant's Exhibit 1.

By Mr. Wells: I mean defendant, I am sorry.

By Judge Rives: All right.

(Received in evidence and marked Defendant's Exhibit 1.)

By Mr. Wells:

[Tr. 374] Q. Now, Mr. Dukes, I notice in the left hand side of this picture some street signs Main Street and Eaton Street. Which direction does Main Street run?

A. Main Street runs generally north and south.

Q. So this picture then is taken from?

A. The north side of the Forrest County Court House facing generally south.

Q. South and that's the layout there, is that right?

A. That is correct. Be you might refer to it as the northeast corner of the court house and court yard.

By Judge Coleman: You are winding us up in a lot of detail, gentlemen. Why don't you tell us what you want to tell us about those pictures?

By Mr. Wells: Court please and this shows the area there.

Q. Now the people who were marching there what route did they take, point that out to the Court?

A. If I might if the Court please there is depicted in this photograph is the general area in which these pickets were picketing area starting along Main Street the picture shows you see the edge of the sidewalk, then generally west to this sidewalk and then south and back around and basically a triangular type route.

[Tr. 375] Q. This little walk way leading right to the court house from the street is approximately how wide?

A. Two and a half feet.

Q. Is it possible for two people to walk——

A. (Interrupting) May be little less.

Q. (Continuing) side by side there?

A. No sir, not in a normal walk.

By Mr. Wells: The Court please, we now offer the next picture and ask that it be marked Exhibit 2 Defendants' testimony.

(Received in evidence and marked Defendant's Exhibit 2.)

By Mr. Wells:

Q. Now, Mr. Dukes, is that a picture taken from the same angle, same general direction but closer to the court house?

A. Generally so yes. This picture was taken in the grassy area which you will notice in that picture it is approximately the position of the flag pole.

Q. Looking in the same direction?

A. Looking generally in the same direction. It shows the northeast corner of the court house which also shows the entrance, two entrances rather in the court house.

By Judge Rives: Those entrances face toward Main [Tr. 376] Street?

By the Witness: Your Honor, where your thumb is on your right hand is the entrance to the Home Demonstration Agent's office. That if you walked out of that office you would be facing north. To the left side of the photograph where the dark spot is is an entrance we have a closer photograph to the County Court Room underneath the steps of the Court House.

By Mr. Wells: The next picture the Court please we offer in evidence and ask be marked Defendants' Exhibit 3.

(Received in evidence and marked Defendants' Exhibit 3.)

By Mr. Wells:

Q. Now, Mr. Duke, I believe this is a larger picture taken standing beyond the flag pole and looking in a southwesterly direction?

A. Generally so yes sir.

Q. Generally so. Has this been enlarged?

A. That is correct.

Q. Now where on this picture is the Home Demonstration Agent's office that's shown in the other picture?

A. May I make some type of mark please I will put the letter A immediately over the door.

Q. Now on this picture here where is the entrance to the [Tr. 377] County Court Room which is on the first floor?

A. If I may if the Court please immediately over the doorway I will put the letter B.

Q. That is the entrance to the County Court Room?

A. That's correct, you get to the County Court Room by going through that entrance.

Q. Now did you have a picture made a closer up picture made of the entrance to the County Court Room?

A. I did.

By Mr. Wells: We offer that if the Court please and ask that it be marked Exhibit 4 Defendants'.

By Judge Cox: You want this other one marked first don't you?

By Mr. Wells: Its marked 3.

By Judge Cox: All right.

(Received in evidence and marked Defendants' Exhibit 4.)

By Mr. Wells:

Q. Now if you will mark B, I believe you marked a B on that larger picture?

A. Yes.

Q. Put a B on this one if you will at the entrance to the entrance to the County Court Room. That's that entrance [Tr. 378] taken closer is that right?

A. Yes sir.

Q. Now, Mr. Dukes, taking Exhibit D-4 evidence which is a close up picture of the entrance to the County Court Room I will ask you to take look at Plaintiff's Exhibit P-1 to the evidence of Keith Brown which is a picture taken on the 10th of April just prior to these arrests and ask you to look at this picture and take picture D-4 depicting the County Court Room and point out to the Court where here these marchers were proceeding and in which direction?

A. May I hold it up? The third individual in the picture

who is a male would be approximately right here which is where the entrance to the court house to the County Court Room and the main sidewalk joins.

By Judge Coleman: Put a C where he was standing please sir.

By the Witness: A†

By Judge Coleman: Put a little letter C where he was standing.

By the Witness: C, all right sir.

By Judge Rives: On what exhibit is this being put?

[Tr. 379] By Mr. Wells: Being put on D-4.

By the Witness: If the Court please, you might notice that in this picture which is P-1 you see the azalea blooms and here are the azalea bushes that produced those blooms it will orient you a little better.

By Mr. Wells:

Q. Now, Mr. Dukes, people coming from Main Street going into the County Court Room or going to the Home Demonstration Agent's office I wish you would point out on Exhibit D-1 the route that they would take that they do take normally?

A. Mr. Wells, it would be somewhat difficult to do it on this particular photograph because you are away from that particular route.

Q. Is this a better one?

A. No, the best photograph that would show it if the Court please is the photograph that Judge Rives has of the people in it or the other one. They would go from the front of the court house steps along the sidewalk opposite the direction in which the people in this photograph are traveling, putting it another way along this walk that would be the route that they would have to follow.

[Tr. 380] By Judge Rives: A route that who would have to follow?

By the Witness: The question was asked if the Court please what route would people generally follow in going from the front of the court house to the Home Demonstration office or the entrance to the County Court Room. This

being the front of the court house they would come along that route if the Court please.

By Mr. Wells:

Q. Now, Mr. Dukes, are you generally familiar with the situation that existed there in Hattiesburg beginning in January of 1964 with reference to the voter registration drives that were started and being put on?

A. Yes sir.

Q. With reference to crowds? What just briefly describe to the Court the nature of the demonstrations, the picketing and so forth beginning on the 22nd of January?

By Judge Coleman: You mean by that what he personally observed.

By Mr. Wells: Yes sir, what you personally observed.
[Tr. 381] By the Witness: For several days prior to January 22nd leaflets were distributed by this COFO organization and others proclaiming what they refer to as freedom day on January the 22nd soliciting members of the Negro race to come to the court house, to take their children out of school and for all to come and January 22nd would be freedom day. On January 22nd several hundred Negroes and whites appeared at the court house demonstrating, picketing, singing, praying, reading, walking and sitting. The press was there, both local and national. Being the County Prosecuting Attorney and charged with the duty of advising the Sheriff of Forrest County, working with the City Police, District Attorney, we made every effort to avoid any violence or incidents and fortunately there was no incident to speak of. We attempted in an effort to have the situation remain orderly to under the supervision of the City Police to designate a march route or route whereby these people could go and as has been testified earlier here for many days this route consisted of three sides, the east, north and west sides of the court house all the way around on the sidewalk were people marching double abreast. As I stated during this time there was singing, chanting, praying, reading, preaching. [Tr. 382] ing. There were arrests made but none for picketing as such. Some were made for breach of the peace. On

some occasions there were pleas of guilty for these arrests and this type of conduct continued over an extended period of time and let up to a certain degree but not entirely until we approached the time that you are referring to April 9th and 10th, 1964.

By Mr. Wells:

Q. Well, now after these big marches and this great group was any effort made to set up some barricades and outline a place where they could picket?

A. It was absolutely necessary, Mr. Wells, because the manner in which they originally picketed or marched completely blocked the front entrance of the court house and being in January and tax paying time we had to make some arrangements for our people to get to the court house so barricades were set up on the north and south side of the Main sidewalk into the court house blocking that area off so that it would not block the main entrance into the court house and in some areas a rope was attached to a portion of the barricade whereby we more or less prohibited the general public from going into this area and these people allowed to picket unmolested within that [Tr. 383] given area.

Q. Now starting about around April 1st, Mr. Duke, I believe they were picketing there pretty well every day?

A. I believe that's correct.

Q. Were they in any great large numbers at that time?

A. It would vary, Mr. Wells, they were not in as large numbers of course as came on January 22nd which was several hundred but it would vary anywhere from 7, 8, 13, 14, 15 and so forth, some grown, some young.

Q. Now we come to April the 9th on Thursday what happened there on the 9th of April? Were you present at that time?

A. Yes sir.

Q. Were you present with some other officers?

A. Yes sir.

Q. Who?

A. Sheriff W. G. Gray, Mr. Charles Morgan and Mr. T. A. Woodward both of whom are and were at that time Deputy Sheriffs of Forrest County, James Finch, District

Attorney, Twelfth Judicial District, State of Mississippi, and myself.

Q. Now what happened on that occasion?

A. That was the day that we received a copy of a law that had been enacted by the Legislature of the State [Tr. 384] of Mississippi and signed by the Governor which you might refer to as a law governing or controlling picketing in the area of public buildings.

Q. And what did you do?

A. And on that particular day at approximately four o'clock there was a large number of people picketing, I don't remember the exact number, and they were going down the north side walk of the court house past the side walk that you see in the photograph there. Sheriff Gray asked the District Attorney and I to accompany him out there along with his deputies. He stopped the pickets and told them that—

By Mr. Smith: Now I am going to object at this point to any hearsay testimony by this witness as to what Sheriff Gray said. Sheriff Gray is capable of saying what he said.

By Judge Rives: But if the witness heard him—

By Mr. Smith: I would submit, Your Honor, that that under the rulings of this Court would be hearsay. I submit that the witness can say that Sheriff Gray said something but that what he said would not would be hearsay.

[Tr. 385] By Mr. Wells: Court please, he was present listening to him talking to the very class that's plaintiffs in this lawsuit.

By Mr. Smith: That is the classic situation of hearsay whereby one witness testifies as to what another witness said whereas the truthfulness of what is said or the contents of what is said is a material issue in the litigation.

By Judge Rives: He is testifying to the act of his saying, not the truthfulness of what he said, but if this witness were present and heard it he can only testify what he himself knows and I would overrule your objection.

By Mr. Smith: Very well.

By Mr. Wells:

Q. What did the Sheriff say to them or what happened?

A. They pickets were asked to stop and they did stop.

They were informed of the existence of the new law.

By Judge Rives: He is not answering your question. Is he testifying to what Sheriff Gray said?

[Tr. 386] By Mr. Wells: He's testifying to exactly what happened.

By the Witness: Sheriff Gray told them that and then——

By Judge Cox: Told them what?

By the Witness: That's what I am getting to. He just asked them to stop, that a new law had been passed governing picketing. He says I want you to hear the law. At that time Deputy Charles Morgan read the law in its entirety to them, not the Sheriff but at the request of the Sheriff Deputy Morgan read the law. Then Sheriff Gray informed the pickets that you have been picketing in such a manner as to obstruct and interfere with entrance into the court house as well as the use of the sidewalks, that I do not want to have to arrest anyone, but that if you continue to picket in the manner that you have been picketing I will be forced to arrest you. They then without asking any questions left.

By Mr. Wells:

Q. Did he make any explanation to them about he was not trying to stop them from picketing altogether?

A. He told them that they could picket so long as they did not do it in the manner in which they had been doing [Tr. 387] and that is so close together and in such numbers as to block the entrances and the sidewalks.

Q. And what happened?

A. They left immediately.

Q. Now——

A. (Interrupting) They were not told as such to disperse. They dispersed of their own free will.

Q. Now were you present at the court house on the morning of April the 10th, Friday.

A. Yes sir.

Q. Go ahead and just tell the Court what happened on that occasion and what was said or done in your presence and what part you took in it?

By Mr. Smith: Same objection as to any hearsay testimony which we contend to be hearsay, Your Honor.

By Judge Rives: Beg your pardon.

By Mr. Smith: I am going to make the same objection and ask that the Court make my objection general to this line of testimony.

By Judge Rives: The witness can testify to what he actually heard himself on this occasion as I understand.

[Tr. 388] By Mr. Smith: My objection is to that sort of testimony and I would like for the record to reflect a continuing objection.

By Judge Rives: The point is each person who makes a statement must testify to the statement himself?

By Mr. Smith: Whether or not this statement was made and the contents of the statement are in issue in this lawsuit and it is our contention that only Sheriff Gray can testify as to what he said.

By Judge Rives: I thought your own witnesses had been testifying to what the Sheriff said.

By Mr. Smith: Well, I was prevented from putting witnesses on the stand that would testify as to the contents of a particular statement that was made to them. For example, when Cameron was on the stand when I had asked Cameron what statements were made to him and there was an objection from Mr. Wells as to the contents of the statement and this objection was upheld as I recall the record, Your Honor.

[Tr. 389] By Judge Rives. You may have a continuing objection to all this line of questioning.

By Mr. Smith: Thank you sir.

By Mr. Wells:

Q. Go ahead, Mr. Dukes, if you will and explain to the Court just what happened on Friday, the 10th?

A. April the 10th?

Q. I mean April the 10th, yes.

A. 1964?

Q. Yes sir.

A. At approximately ten o'clock A.M. a large number of white and negro individuals, pickets or demonstrators approached the court house from Batson Street which is directly across the street from the court house and led by Reverend Cameron they crossed Main Street and started in single file, they came up there in two abreast and when

they crossed Main Street with the assistance of a police officer they then formed a single file led by Reverend Cameron and started picketing as they had been in the past but in a much larger number.

Q. Approximately how many were in that group?

A. Somewhere from I would say 30 to 35 something near that. By the time that the last person who arrived [Tr. 390] on the scene was able to start walking the first person had nearly made a complete circle around and had just formed a circle of pickets around the area described in these photographs. They made another round or two—

By Judge Rives: That is the area in which the flag pole is?

By the Witness: Yes sir, yes sir, the area shown in these photographs that we have here today.

By Judge Rives: Confining your testimony to what you yourself saw.

By the Witness: Yes sir, I am. I was there on the scene. Sheriff Gray and I along with his deputies were standing there on the front steps of the court house near the bottom of the steps. These pickets when the circle of picketing was completed made one or two, I don't recall the exact number, additional revolutions around this area. Then Sheriff Gray and I both walked against the line that you have seen in this photograph, I do not see it now if the Court please, against this line for the specific purpose of attempting to determine—

[Tr. 391] By Judge Rives: Now when you say this line please designate it by the exhibit number.

By the Witness: I beg your pardon if the Court please, it is Exhibit Number P-1 to the witness Keith Brown. We walked against the pickets in this line, in other words in the opposite direction in an effort to actually determine and ascertain whether or not a person could walk and be free of obstruction and it was necessary that we get up on the grass near these azalea bushes in order to walk in this direction. Having done that and this picture was made immediately following that at my request to show the large number of pickets there Sheriff Gray then stopped the line by stopping Reverend Cameron and told him, I am referring to Sheriff Gray told Reverend Cameron in my presence that you have been warned concerning this

picketing, there are too many of you here, or words to that effect, I don't pretend to quote him word for word, that you are blocking the sidewalks and the entrances to the court house, if you continue I am going to have to arrest you. Reverend Cameron made no comment, merely nodded his head and proceeded to march. He made one more additional revolution and when he did they arrived back [Tr. 392] at approximately well this area which is in Exhibit D-2 to the corner of the building as shown there Sheriff Gray and I along with Deputy Morgan were standing there when they came by he told Reverend Cameron Cameron you are under arrest. I personally told him because I was there with him I told him Bud, that's his name, we refer to him as Bud Gray, tell them why they are being arrested and he then told them you are being arrested for unlawfully picketing. I specifically instructed him to do so anticipating the probabilities of a lawsuit. They were then instructed to follow Deputy Morgan to the Forrest County Jail along the north side of the court house which they did.

By Mr. Wells:

Q. Now, after these people were put in jail did you make some investigation to determine if any of them were minors?

A. Yes sir.

Q. And how many did you find?

A. I don't recall how many, Mr. Wells, we have handled so many of these type cases. I do recall that our policy of minors of the age of 8, 9, 10 and 11 years old were immediately released to the parents and were not ever actually put in the jail, they were carried to the Sheriff's [Tr. 393] office.

Q. Any other juveniles certified to the Juvenile Court?

A. Some juveniles were certified to the County Court for trial.

Q. Juvenile Court. Now, Mr. Dukes, the charge that is made in the complaint, amended complaint in this case is that you along with the other defendants, District Attorney and the Sheriff and the Governor, as a result of a conspiracy arrested these people and are seeking to prosecute them to thwart their efforts to continue a voter registration

drive. I will ask you to tell the Court if the fact that they were having a voter registration drive and been having had any connection with or any was the cause at all of these arrests and these prosecutions?

A. It did not have any effect at all in it and was not the cause in any way. Registration for voter appeal had occurred prior to these arrests and occurred subsequent to these arrests and on occasion when nobody was arrested, bothered or even spoken to by a law enforcement officer. The only and sole reason for their arrest was that it was felt that they were picketing and demonstrating in such a manner as to actually obstruct the sidewalks and ingress and egress to the entrances of these buildings and they [Tr. 394] were warned to cease doing so prior to their arrest and persisted and deliberately continued to do so.

Q. Now were there some arrests made that afternoon of the 10th?

A. Yes sir.

Q. And some the next day on the 11th?

A. Yes sir.

Q. Now following the 11th from then until the 18th of May did you have any occasion or have occasion to be at the court house on any day between those dates?

A. I was there practically every day, Mr. Wells. I would venture to say I probably was there every day.

Q. Was there a continuation of some picketing there from the 11th or 12th of April until the 18th of May?

A. There was.

Q. Approximately how many would be in a group at a time?

A. It varied in numbers, Mr. Wells, sometimes as many as 3, sometimes as many as 8 or 9 or 10, but they would do it at such intervals that there would be no interference with the use of the sidewalk.

Q. Were there any arrests made at all?

A. Not until May 18th I believe was the date and then a group what appeared to me to be deliberate marched [Tr. 395] in a very close manner where nobody could get between them or anything like that and they were arrested under the same statute and to my knowledge there have been no arrests since that date for that purpose.

Q. And you tell the Court that the voter registration drive had nothing in the world to do with it?

A. That's correct. It had nothing to do with our arrests. I mean it obviously had something to do with the people having come there but it did not effect us.

Q. Are you trying to enforce this law in order to discourage it?

A. That's correct.

Q. I say are you trying to enforce it in order to discourage voter registration?

A. Oh no sir.

By Judge Rives: You gentlemen understand the objection was made on the ground of hearsay testimony.

By Mr. Smith: That's right, Your Honor.

By Judge Rives: Some of this testimony might be objectionable on the grounds of conclusion.

[Tr. 396] By Mr. Smith: I was about to come to that conclusion, Your Honor. There were two or three questions I had let go because I thought perhaps that would be the end of it.

By Judge Rives: We won't stop them unless you object. I didn't want you to think we ruled on that.

By Mr. Smith: Thank you.

By Mr. Wells: Your Honor please, this man is a defendant.

By Judge Rives: I understand that.

By Mr. Wells: And he is the one who is being charged with bad faith.

By Judge Rives: I understand.

By Mr. Wells:

Q. Let me ask you this, Mr. Dukes. Does the Sheriff or any deputies or anybody connected with the Sheriff's office wear at anytime uniforms?

A. No sir, they either wear what we refer to as plain clothes a suit or sport shirt and dress trousers.

[Tr. 397] Q. Don't dress in uniform at all?

A. No.

By Mr. Wells: Take the witness.

By the Witnesses: They all do, I might say, Mr. Wells, have a badge that they all display.

By Mr. Wells: But they are not in uniform such as was described by some witness here. Take the witness.

Cross-Examination.

By Mr. Smith:

Q. Mr. Dukes, when did you receive a copy of House Bill 546?

A. My best recollection, Mr. Smith, is the afternoon of either May, I beg your pardon, April 9th or the preceding afternoon, I believe it was that same afternoon.

Q. Was it a copy signed by the governor?

A. We had a certified copy that we received from Heber Ladner, Secretary of State of Mississippi.

Q. You are an attorney are you not, Mr. Dukes?

A. Yes sir.

Q. And you have been present in the court room during all of this testimony have you not?

[Tr. 398] A. Yes sir.

Q. Had you been anticipating receipt of this particular bill?

A. Yes sir.

Q. Had you been helpful, instrumental or participate in any way in its passage by the legislature.

A. No sir, I'm not in the legislature.

Q. Did you draft the bill?

A. No sir. Didn't know its contents until I received it that afternoon.

Q. I see. You had heard that it was in the process of passage?

A. Yes sir.

Q. Had you discussed it with any of your representatives in the legislature?

A. Not to my knowledge I had not.

Q. You had not discussed it with anyone in the Governor's office?

A. No sir.

Q. No one in the legislature?

A. I don't try to tell the Governor his business.

Q. Have you sent any complaints about the picketing in Forrest County up to the law enforcement officials in the state capital?

A. No sir, we figure law enforcement in Forrest County [Tr. 399] is a local issue.

Q. How did you manage did the, strike that. Did the bill come down to you by mail?

A. No sir.

Q. How did it come down?

A. My best recollection now, when I say no the bill if I remember correctly came either to Sheriff Gray or to Mr. Finch, the District Attorney. I saw it and it contained the certificate of Honorable Heber Ladner, Secretary of State. That is why I am not certain as to the exact time that it came because it did not come directly to me.

Q. Was it delivered by hand from the state capital?

A. I assume that it was, somebody they may have sent somebody after it, I don't know.

Q. Were you in a hurry to get it so that you could use it to stop these demonstrations?

A. Not as such, no sir. If it was such a law existed and it concerned our situation I wanted to see what the law was, yes. I did not send for the law, Mr. Smith.

Q. Were you anxious to get it so as to use it to terminate these demonstrations that is and your answer was not as such?

A. No, I was not interested in termination demonstrations as such. We have been tolerating them for several months but it was my information which was hearsay that a law had been passed which might possibly concern a situation as existed at our court house, that being possibly the truth I wanted to see what the law said.

Q. So the demonstrations have been going on for some months and the every afternoon that you received the law you read it to the—

A. (Interrupting) No sir.

Q. (Continuing) demonstrators?

A. I did not read it to them.

Q. Well you had it read to them?

A. No, the Sheriff had it read.

Q. The Sheriff had it read. You approved of the reading of it?

A. Did I approve?

Q. Yes.

A. He did not ask me if I approved or not.

Q. Sir?

A. He did not asked if I approved or not.

Q. I see.

A. Do you mean do I think it should have been read?

Q. Yes.

A. Yes sir, I think they were entitled to know the contents [Tr. 401] of the law.

Q. Was it your opinion that they were violating the law the afternoon of April the 9th?

A. Quite possibly, yes sir, fact I think probably they were, but having not been heretofore informed of the law it is my belief that the Sheriff desired to first inform them and give them an opportunity to abide by the law.

Q. Well you had the law with you on the afternoon of the 9th didn't you?

A. I did not. I mean the law was in my presence, yes sir.

Q. You had read it?

A. Yes sir.

Q. You had observed the demonstrations?

A. Yes.

Q. And you couldn't make up your mind as to whether they had violated it or not? You say quite possibly?

A. I am not the law enforcement officer, Mr. Smith. I have not made any arrests.

Q. I see.

A. Sheriff Gray makes the arrests.

Q. That wasn't the question. The question was whether or not they had violated the law on the afternoon of uh.

[Tr. 402] A. My personal opinion is that they did.

Q. Your previous answer was that quite possibly they had done so. Was there any question in your mind about that?

A. Was there any question whether or not they violated the——

Q. (Interrupting) Yes, the——

A. (Continuing) law that afternoon.

Q. (continuing) reason I ask that is that your previous answer to that question was possibly they had done so?

A. I can't answer you definitely yes or not, Mr. Smith, because I am not charged with the duty of making an arrest and did not have to make a decision on that afternoon.

Q. I see. So you really can't come to any conclusion as to whether they were violating it or not is that correct?

A. It is my opinion that they were.

Q. It is now your opinion that they were violating it?

A. And it was my opinion then but it is not for me to make the decision.

Q. Was it your opinion that they were violating it on any occasion prior to that date?

A. The law did not exist.

Q. That was not the question, Mr. Dukes. The question [Tr. 403] was whether or not you had vio, you had come to, rephrase the question. In your own opinion having observed these previous demonstrations now knowing the contents of the law had they on any other occasions conducted themselves so as to violate its provisions?

A. May I answer you this way are you asking me if the law had been in effect?

Q. That's in effect what I am asking you?

A. Yes sir, definitely they would have violated it.

Q. I see. Well, now you said in answer to one question that they were definitely violating it on the 9th and previously you had said possibly they were violating it on the 9th. How could you tell would they be violating it if they were four feet apart?

A. Mr. Smith, as I have answered earlier it was not up to me to tell. I did not make any arrest.

Q. Well now, Mr. Dukes, you are a law enforcement official of the county are you not?

A. I am Prosecuting Attorney.

Q. That's right. Now you are required to advise these law enforcement officials like Mr. Gray as to the law are you not?

A. Yes sir.

Q. Now if these people were walking four feet apart [Tr. 404] would you advise Mr. Gray that they were violating this statute?

A. If they were walking four feet apart?

Q. Yes sir.

A. I don't know, I would have to see it first.

Q. Well, what if they were walking—

A. (Interrupting) We set no scale as to 3 feet, four feet or 2 feet as such. The general thing I guess you would

say that if they were walking so close together that it was it would have prevented a person from reasonably going through the line then they would have——

Q. (Interrupting) Well how do you reasonably go through a line, Mr. Dukes?

A. Well, the question of what is reasonable I believe, Mr. Smith, is one that people differ on.

Q. That's right something that I could think would be reasonable you might not think so reasonable is that right?

A. That's right.

Q. The law says here and I am reading from it that its its unlawful for somebody to engage in picketing or mass demonstrations in a manner as to obstruct or interfere with free ingress or egress. Now it doesn't say anything about reasonable does it?

[Tr. 405] A. You are asking me what would be——

Q. (Interrupting) No, I am asking you——

A. May I finish my answer please sir.

By Judge Rives: He hasn't finished his question.

By Mr. Smith:

Q. I was asking you, Mr. Dukes, if the statute said anything about reasonableness.

By Judge Coleman: I believe though the statute speaks for itself.

By Mr. Smith: I have, Your Honor, to test this witness as to his understanding of the statute since he is charged under the Constitution of this State with its enforcement.

By the Witness: I don't to answer your question I don't know if it says reasonable or not.

By Mr. Smith:

Q. I will show you the statute, Mr. Dukes? You show me there where it says reasonable access or reasonable passage through a line I would like to hear about it.

A. I am assuming this is an identical copy, it appears to be from your bill of complaint.

[Tr. 406] Q. That's from Judge Cox's opinion.

By Judge Rives: Mr. Smith, I had some impression that after this case was started that statute was amended and the word reasonably put in there.

By Mr. Smith: I believe I——

By Mr. Wells: (Interrupting) Yes sir, it has been if the Court please and I was going to introduce it as an exhibit later on. It has been amended—

By Mr. Smith: (Interrupting) You are right, I remember now, Judge. I had forgotten.

By Mr. Wells: So as to obstruct or unreasonably interfere and I have a copy with Secretary of State's seal on it. Of course its in the law book and I was going to get it in the record.

By Judge Rives: Of course we may be wasting some time.

By Mr. Smith: Right, I will go along, I am glad you called my attention to that, Judge, I had forgotten it, otherwise I wouldn't have fooled with that thing this long.

[Tr. 407] Q. Now would you tell me in your opinion what would be a manner that would obstruct or interfere with free ingress or egress, Mr. Dukes, in a situation like this? Would uh in that area you are talking about would 20 pickets do it?

A. Mr. Smith, you are asking me a hypothetical situation. Now I think in some instances 3 to 4 people could do it and if they were further apart it would take more than that. It is my opinion that on the date involved here that they did actually obstruct and interfere with ingress and egress to and from the entrances of the court house as well as use of the sidewalk.

Q. That's your opinion?

A. That is mine, yes sir.

Q. And it was on the basis of that or at least on the basis of Sheriff Gray's opinion in connection with this statute these people were arrested is that not the case?

A. Yes sir, I'm assuming so.

Q. Now what if there had only been about 15 of those pickets there walking about 8 feet apart?

A. I can't answer your question as to what would have been, Mr. Smith, because you are posing a hypothetical situation which I can't answer.

[Tr. 408] Q. Well I know they are hypothetical and I am entitled to know the extent of which this statute has its sway over people and I am asking you if we talked about the same area that these people were walking in walking at the same pace they were walking if there were 20 people walking there walking 10 feet apart would that be a violation of the statute?

A. If 20 people were walking and were 10 feet apart?

Q. Yes sir.

A. On certain areas of the sidewalk——

Q. (Interrupting) No, walking in that same you know in that same area that we are talking about.

A. It's difficult to visualize a situation when you are looking at an area like that, Mr. Smith, 10 feet apart.

Q. Yes sir.

A. Uh it would be my off the cuff opinion and again we are dealing with a hypothetical situation that I can't discuss with any degree of accuracy that on one particular area and that area is near the entrance of the County Court Room that they might possibly be in violation of the statute.

Q. Well, now what if there was——

A. (Interrupting) I can't just picture in my mind something that I have not seen.

[Tr. 409] Q. What if these people instead of being 10 feet apart were 12 feet apart and they were only instead of 10 of them say there were only 6?

A. The same answer would apply, Mr. Smith.

By Mr. Wells: If the Court please, we object to further pursuit of this line of questioning with this witness as calling for an interpretation by this witness of this statute which of course must be interpreted by a court and in any given case becomes a factual situation to be determined by a jury under proper instructions from the court and this suit is predicated on two premises, one is that the statute is unconstitutional on its face. The other is that it has been unconstitutionally applied to these plaintiffs at the time it was applied. He is going off into a realm of what would be your legal opinion about a situation that might exist on another occasion that is not here in issue.

By Mr. Smith: Now in reply to Mr. Wells' objection I might say that the problem with this statute which has been set forth pretty clearly in our complaint and in previous briefs is that its a statute that's not susceptible of a reasonable interpretation. As a matter of fact its the [Tr. 410] kind of statute by virtue of its over broad language that requires wide and unconstitutional discretion on the part of the enforcing officer in its enforcement and

cannot be enforced in any other way and that was the purpose and nature of these questions.

By Judge Rives: Mr. Smith, this witness has testified that in his opinion the people were violating the statute on April 9th and also on April 10th in walking. Now we the Court thinks that you are entitled to examine him to a reasonable extent on what constituted a violation of the statute in cross examining him as against his opinion that they were violating the statute.

By Mr. Smith: Yes sir.

By Judge Rives: You have asked him a considerable number of questions on that subject.

By Mr. Smith: Yes sir.

By Judge Rives: And I don't think those questions should continue indefinitely but to a reasonable extent you [Tr. 411] are entitled to cross examine him as to what constituted a violation of the statute. At the present time we will overrule your objection to that question.

By Mr. Smith: Thank you, Your Honor, keeping that caveat in mind I will proceed.

By Judge Rives: But do not continue that cross examination too interminably and terminate it in a very short time.

By Mr. Smith: I understand. I will try not to burden the Court much longer with it.

Q. Mr. Dukes, there were 10 people arrested in the afternoon of the day in question that is April 10th. Is that not correct?

A. The afternoon of April 10th?

Q. Yes. You were here when Mrs. Williams testified that she and 9 what she called school children were arrested?

A. Yes, I believe there were 9 or 10, yes sir. I have a list of them but I don't remember their names.

Q. You were there were you not?

A. Mr. Smith, I honestly do not recall whether I was there that afternoon or not. I know positively I was there that morning.

[Tr. 412] Q. Now in the morning you said Mr. Gray had said to Mr. Cameron there John there are too many people here, you will have to break it up or you are going to be arrested or words to that effect isn't that what was said?

A. There were too many people and they were marching too close together and were blocking and obstructing the entrances—

Q. (Interrupting) Yes, one of the things that Mr. Gray said to Mr. Cameron was there are too many people here, isn't that true?

A. I don't recall him using those exact words, Mr. Smith. I don't believe I said he used those words.

Q. Well, let's go back and have the reporter read it to you because that's the way I wrote it down.

By Judge Rives: We recall the testimony.

By Mr. Smith: All right sir.

By the Witness: I think I said it was words to that effect.

By Mr. Smith:

Q. All right, that there was too many people there and now how many people were there?

A. My best recollection again is that there was approximately [Tr. 413] mately 30 to 35.

Q. And there were 9 or 10 there that afternoon do you think that was too many people there?

A. As I say I don't recall having been there that afternoon.

Q. But I think you recall there were 9 or 10 people arrested there that afternoon?

A. I had to prepare the charges.

Q. Right. Now is that in your opinion as a law enforcement official for Forrest County too many people there?

A. 9?

Q. 10, say 10?

A. Well, it depends on how they conduct themselves after they are there, Mr. Smith.

Q. If they conducted themselves in walking a distance apart say 5 or 10 feet, Mr. Dukes, would that be too many people if these people on the afternoon of the 10th I mean the 9th the 10th I'm sorry had been walking 10 feet apart would that mean that they were violating the statute by having too many people there if they were 10 of them?

A. There were 10 people walking 10 feet apart?

Q. Yes sir.

A. I can't give you a yes or no answer.

[Tr. 414] Q. Why not?

A. Because I didn't see them.

Q. Would it require that you actually see them before you could make up your mind as a law enforcement official of Forrest County to give some advice to say Bud Gray who wanted to know about that?

A. I believe under the laws of Mississippi, Mr. Smith, in order to arrest somebody for a misdemeanor it has to be in your presence or else have a warrant for his arrest.

Q. What if Bud Gray would come to you and say, I will terminate with this question.

By Judge Rives: This is getting pretty close to argument, Mr. Smith.

By Mr. Smith: All right, I will withdraw it, Your Honor.

Q. Now, Mr. Dukes, you say you had some pictures taken?

A. Yes sir.

Q. I noticed that you have some other pictures. I wondered if we might have those pictures to show to the Court.

A. I am represented by counsel, Mr. Smith.

By Mr. Wells: I will be glad to give them to you.
[Tr. 415] By Mr. Smith: There are no other original pictures. Very well.

Q. Now were you present at the arrests of May 18th?

A. I don't recall it. My personal opinion would be that I was not. I don't recall it.

Q. How many people were arrested at that time?

A. My best recollection from the records of the arrests was 9, Mr. Smith.

Q. You know why Mr. Gray arrested those 9?

A. No sir.

Q. Were they marching in the same area?

A. I don't know, I don't recall having been there.

Q. Now you have charged them have you not?

A. I believe I have.

Q. You signed the bill of information on them did you not?

A. Yes sir.

Q. What were you told so as to furnish a basis for that bill of information?

A. Mr. Smith, for me to attempt to repeat what I was

told at that time having been a year and some months would be virtually impossible.

Q. Your records show what you were given in the way of foundation for signing an affidavit as a prosecuting official?

A. It may show in my office in Hattiesburg, I don't recall. [Tr. 416] Q. And then again it may not?

A. I do recall that the people were arrested on the spot by Sheriff Gray and that he discussed it with me and I saw fit at the time to make affidavits based on information charging those people with violation of the statute. It may be that at a later time if my records were available I could recall what he told me. I don't recall it at this particular time.

Q. And you signed the information on what the police officer told you?

A. Yes sir.

Q. And it was then apparently your evaluation that what he told you was that 9 people in that area had violated the provision of this statute?

A. I signed the affidavit.

Q. You don't know whether they were walking too close?

A. I could not answer that now, no sir, I don't recall.

Q. Now, Mr. Dukes, have there been any parades in Forrest County particularly in Hattiesburg since the arrests of May 18th?

A. Yes sir, parades schools which included white and colored bands, school children, cheer leaders, floats and so forth.

Q. Do those parades ever block the streets?

[Tr. 417] A. Well, I am sure they did but I didn't ever hear anybody complain about it though.

Q. Did you ever advise Bud Gray that they were in violation of this statute?

A. No sir, because I was informed that they had permission of the city the mayor and commissioners.

Q. Now does this statute contain anything about getting a permit to hold a parade?

A. No sir, sure doesn't.

Q. If the COFO people to put on this demonstration had gotten a permit they wouldn't be in violation of this statute?

A. Beg pardon.

Q. If the COFO COFO people had not gotten had failed to get a permit to hold this picket line right where they did they wouldn't be in violation of this statute all other things being the same would they?

A. That would be your opinion.

Q. I am asking you the question, Mr. Dukes?

A. I think they would, yes sir.

Q. By not getting a permit they would be in violation of this statute.

A. I think they are violating the statute when they conduct themselves in the manner that they conducted themselves on April 10th, 1964.

[Tr. 418] Q. In other words you think its a violation for them to picket the court house to vote to get registered to vote, wait a minute, but its not a violation of the statute to hold a parade that blocks traffic in Hattiesburg is that right?

By Mr. Wells: Wait just a minute. If the Court please, we object to this, this statute specifically refers to demonstrations and picketing and nothing about parades in this statute.

By Mr. Smith: Your Honor, I guess it's difference between me and Mr. Wells about what's a demonstration, I think a demonstration says its a demonstration, doesn't say in here that its got to be a demonstration for registration to vote, doesn't say its got to be a demonstration for Barry Goldwater or Lyndon Johnson or anything else, it says demonstration.

By Judge Rives: I think we are getting into an argument on the law. I would like to ask the witness however can a permit be granted to parade in such a manner in your opinion as to block the entrance to the court house?

By the Witness: No sir, I do not think so.

[Tr. 419] By Judge Rives: In other words could the city grant a permit to violate that statute?

By the Witness: Could the city grant a permit to march around in the court yard?

By Judge Rives: To violate that statute?

By the Witness: No sir, I don't think so.

By Judge Rives: Permits and the statute are two separate things?

By the Witness: Yes sir. No sir, it definitely is my

opinion that the city certainly couldn't grant anybody permission to violate a state statute.

By Judge Coleman: Let me ask you this. The parading that you have been talking about was that in the streets or was that on the court house grounds and adjacent to the entrances of the court house?

By the Witness: It was in the streets, Your Honor.

By Mr. Smith:

Q. I take it that you are aware that the statute provides [Tr. 420] so as to not obstruct or interfere with free use of public streets, sidewalks or other public ways adjacent or contiguous thereto you are aware of that provision of the statute sir?

A. Yes sir.

Q. Now when a parade is held in Hattiesburg say like the one that's going to be held tomorrow will the public be able to use the parade route during the time of the parade if its on a public street?

A. I rather doubt it, Mr. Smith.

Q. They would not be allowed to do so by the police would they?

A. I don't think any of them would attempt to. Most people enjoy a parade of this type, colored and white.

Q. That's right. Now isn't it true that if such a parade were held and somebody attempted to drive his car through the parade route he would not be allowed to do so by the police?

By Judge Rives: Mr. Smith, I think you are getting into a legal argument. The question is whether parades comes within picketing or mass demonstrations may be two different things.

[Tr. 421] By Mr. Smith: Well, just one final question.

Q. Have you ever arrested anybody under this statute that has been involved in a parade?

A. I have never arrested anyone.

Q. Have you ever seen have you signed any information against anyone for violation of this statute since April the 10th of 1964 for indulging in a parade?

A. A parade?

Q. A parade?

A. No.

Q. Have you signed any informations for violation of this statute against anyone except those that we have mentioned here in Court today?

A. Not that I recall I haven't.

Q. Very well.

A. I might mention though, never mind.

Q. Now, Mr. Dukes, are you counsel or one of the counsel for Mr. Theron Lynd?

A. No sir.

Q. You have no obligation in his defense?

A. Beg your pardon.

Q. Are you participating in that case at all?

A. No sir.

Q. You are not counsel of record?

A. No sir.

[Tr. 422] Q. For the State of Mississippi?

A. No sir, and have never been.

By Mr. Smith: I think that's all.

By Judge Rives: Mr. Dukes, may I ask you did any persons complain to you as the prosecuting officer of the county, prosecuting attorney of the county, that they had undertaken to gain access to the court house and the access had been blocked?

By the Witness: Judge Rives, we had had complaints since January the 21st constantly.

By Mr. Smith: Your Honor, I am going to ask that this witness be instructed to limit his answer to complaints that he knows about personally.

By Judge Rives: Were any of these arrests that were made made upon complaints to you?

By the Witness: No sir, they were not made to me, no sir. As I stated though I personally attempted to walk the sidewalk and could not do it but I did not have any particular individual come to me on that given date and com-
[Tr. 423] plain, no.

By Judge Rives: Did you see anybody who was actually trying to get into the court house have their access blocked?

By the Witness: My recollection is, Judge Rives, that Mrs. Burkett who is one of the proposed witnesses here today attempted to leave her office and go into the court house and could not do so.

By Judge Rives: Attempted to go out?

By the Witness: Yes sir.

By Judge Rives: Did you see, Mrs. Burkett can testify to that.

By the Witness: I think that I did, Judge, I can't say positively that I did but my best recollection is that I did though.

By Mr. Smith: That's all I have, Your Honor.

By Mr. Wells: I have no further questions of this witness if the Court please.

(Witness excused.)

[Tr. 424] By Mr. Wells: Call Mrs. Pearl Burkett please.

Pearl Burkett called as a witness for and on behalf of Defendants, was sworn and testified as follows:

Direct examination.

By Mr. Wells:

Q. You are Mrs. Pearl Burkett?

A. Yes sir.

Q. Mrs. Burkett, talk loud enough if you will please ma'am so this gentleman can take down what you say and Judge Coleman can hear you way over there?

A. All right.

Q. Where do you live, Mrs. Burkett?

A. Hattiesburg.

Q. Do you have any official position with Forrest County or are you employed by the county?

A. Home Demonstration Agent.

Q. Of Forrest County?

A. Yes sir.

Q. Where is your office, Mrs. Burkett?

A. Its on the ground floor.

Q. In the County Court House?

A. Yes sir, in the County Court House.

Q. There has been a picture introduced, Mrs. Burkett, which has been marked Exhibit D-2 showing a side of [Tr. 425] the court house. Do you recognize the door to your office?

A. Yes sir.

Q. In that picture?

A. Yes sir.

Q. Its a door with the letters that you can see p i v e on them?

A. Yes, that's it.

Q. That's where your office is?

A. That's right.

Q. Now, Mrs. Burkett, in connection with the duties of your office do you frequently have occasion to go to the county agent's office?

A. Yes sir.

Q. Generally about how often?

A. Sometimes its four and five times a day. It just varies from day to day.

Q. Usually at least every week?

A. Oh yes sir, every day, we never miss a day.

Q. Now where is the county agent's office situated in the Court house?

A. Above our office on the second floor.

Q. I see. Now what route do you usually take in going from your office to the county agent's office?

A. Take this little walk way around to the front.

[Tr. 426] Q. You are pointing this out on Exhibit D-2 I am referring to, and you came from your office go what direction?

A. Follow this little walk way around to the front steps and up those front steps there.

Q. In other words you go east from your office?

A. Yes sir.

Q. Toward Main Street?

A. Yes sir.

Q. And then follow this route on around to the steps?

A. That's correct.

Q. Passing the entrance to the County Court Room?

A. Yes sir.

Q. That's the usual route you take?

A. Yes sir.

Q. I will ask you, Mrs. Burkett, if you recall the date of Friday, April 10th, 1964, that being the day when quite a few people were arrested there at the court house in connection with some picketing. Do you remember the occasion of that?

A. Yes sir.

Q. Did you observe this picket line out there on that occasion?

A. Oh yes sir, yes sir.

Q. Could you give the Court some idea about the approximate number of people who were in the picket line, on that occasion?

A. I don't, I don't really know but I would say somewhere between 35 and 40.

Q. I see. Were they walking far apart or close together?

A. Close together.

Q. Did you have an occasion during the time that that line was being picketed to go to the county agent's office?

A. Yes sir, to pick up some material.

Q. Would you tell the Court just what happened and how you got up there?

A. I started the regular route and they were so close together that I had to wait for just a moment to get in line and I fell in line with them and started weaving back and forth until I reached the front steps and then dropped out of the line.

Q. In other words the only way you could get around there to get in there was to get in the picket line itself?

A. Yes sir, I marched with them.

Q. How narrow is that walk going around there, how wide, well I will put it this way is it wide enough for two people to walk side by side?

[Tr. 428] A. No sir, its not wide enough for two people walk on the walk.

Q. Side by side?

A. Side by side.

Q. And that's the way you got to the county agent's office that day?

A. Yes sir.

By Mr. Wells: Court please, I have no further questions.

By Mr. Smith: No cross examination of this witness.

By Mr. Wells: If Your Honor please, may she be excused, she needs badly to get back to Hattiesburg?

By Mr. Dukes: She is by herself and would like to get home before dark.

By Judge Rives: You may be excused, Mrs. Burkett.

By the Witness: Thank you.

(Witness excused.)

By Mr. Wells: Call Selby Bowling, Mr. Selby Bowling.

Selby Bowling called as a witness for and on behalf [Tr. 429] of defendants, was sworn and testified as follows:

Direct examination.

By Mr. Wells:

Q. You are Mr. Selby Bowling?

A. Yes sir.

Q. Talk a little louder if you will; Mr. Bowling, please sir. Where do you live, Mr. Bowling?

A. Hattiesburg.

Q. What, if any, official position do you hold in Forrest County?

A. I am president of the Forrest County Board of Supervisors.

Q. Where is the office to the Board of Supervisors maintained with reference to the court house, Mr. Bowling?

A. Its in the annex on the left side of the main entrance of the court house.

Q. How often are you in that office?

A. I am in there every day!

Q. Every day?

A. For five, five and a half days a week.

Q. In other words you are one board that keeps the board office open continuously, is that right?

A. Yes sir, I do.

Q. Mr. Bowling, I direct your attention to Friday, [Tr. 430] April 10th, 1964, when a group of people were arrested on the court house grounds in Hattiesburg and ask you if you were present at the court house on that occasion?

A. I was.

Q. Did you see the picket line that morning?

A. Yes, I did.

Q. Could you give the Court your best judgment as to the number of people who were in the picket line?

A. I would think it would be about 35 or possibly 40 people.

Q. Beg pardon?

A. 35 or 40 people.

Q. Were they walking well spaced or were they close together?

By Mr. Smith: I am going to object to the leading character of some of these questions. I think in some method it might help but.

By Judge Rives: Don't lead him.

By Mr. Wells:

Q. Well, with reference to their proximity of one to the other how were they walking, Mr. Bowling?

A. They were closely spaced.

[Tr. 431] Q. I show you, Mr. Selby, what has been referred to or identified as Exhibit P-1 to the evidence of Mr. Brown and ask you if that photograph pretty well pictures the situation on that day?

A. It does.

Q. Little louder please sir?

A. It does.

Q. Mr. Bowling, are you familiar generally with the width of the sidewalks there on the up in the court house grounds where those pickets are walking?

A. Right in front of the court house its about 6 or 8 feet wide but around to the side its no more than 3 feet wide.

Q. In otherwords around to the side there is where it is around 3 feet?

A. Yes sir.

Q. Is it wide enough for people to walk two abreast comfortably?

A. No sir.

Q. Were you present on the occasion when these people were arrested?

A. I was.

Q. Where were you standing sir?

A. I was standing on the steps of the court house.

Q. On the steps of the court house?

[Tr. 432] A. Yes sir.

Q. I will ask you if you saw the Sheriff, well, first let me ask you this. Do you know the Reverend John Cameron?

A. Yes sir, I do.

Q. I will ask you if you saw the Sheriff Gray engaged

in any conversation with Reverend Cameron that day?

A. I did.

Q. Little louder please sir?

A. I did.

Q. Were you close enough to hear the conversation?

A. I understood he asked them to disperse.

Q. I mean did you hear it?

A. No sir, I didn't.

Q. Were you close enough to actually hear it?

A. No sir.

Q. After he had his conversation with Reverend Cameron what happened with the picket line, did it continue or was he arrested right then?

A. Uh I believe they dispersed and then came back a little later.

Q. This is on the morning, Friday morning?

A. That's Friday morning?

Q. Yes sir.

[Tr. 433] A. About ten o'clock he arrested them I think somewhere in the neighborhood of around ten-fifteen.

Q. That he arrested them?

A. Yes sir.

Q. Did the picket line continue after the Sheriff had a conversation with him?

A. Yes sir, it did, it made another two or three rounds,

Q. Before they were arrested?

A. Before they were arrested.

By Mr. Wells: Take the witness.

Cross-examination.

By Mr. Smith:

Q. I thought I understood you, Mr. Bowling, to say that after Mr. Gray talked to the picket line or to Mr. Cameron that they dispersed and came back later. Did you say that?

A. That was the day before.

Q. That was the day before?

A. I was in error on that statement.

Q. You were confused as to what day, is that the problem?

A. That's right.

Q. Now where were the TV cameras?

A. I really don't know. I didn't see any TV cameras.

Q. Didn't see any TV cameras there. Did you see that [Tr. 434] mobe that newsmobile they had parked out there?

A. I don't recall having seen it. I know they had one across the street at one time.

Q. Didn't have a newsmobile parked right out there on Main Street in front of the court house?

A. I wasn't paying any attention to that. I was observing what was going on at the sidewalk.

Q. You didn't pay any attention to somebody taking pictures of them?

A. No, sir, that was very common occasion around there.

Q. With newsreel cameras?

A. Yes sir, all types of cameras.

Q. You have seen newsreel cameras out there before?

A. Yes, I have.

Q. When was that?

A. Well, they have been marching some 6 or 8 weeks I think.

Q. Well when was the last time before the 10th of April that you had seen a newsreel camera out there?

A. I don't recall any particular date.

Q. Well was it a month before?

A. It was probably a week before.

Q. The week before. Were there any newspaper men around there?

A. Yes sir, I am sure they were.

[Tr. 435] Q. Did you know any of them?

A. I only knew one and that was Mr. Chaze, Mr. Elliott Chaze, who is the Hattiesburg American reporter.

Q. Where was he standing when Mr. Gray talked to Reverend Cameron?

A. I came down the steps and I passed by that's the reason.

Q. Now you say you seen a newsreel camera there about a week before. What company was that do you know what newspaper?

A. I don't know. I think ABC, ACB, and all of them were there at one time or the other.

Q. All right now before that week before had you seen anymore newsreel cameras around there?

A. I don't recall.

Q. You don't recall that's the only time?

A. Yes sir.

Q. Now when you saw the newsreel camera there before had there been any arrests on that day?

A. Not to my knowledge.

Q. Uh huh. Was Sheriff Gray there at the time?

A. I don't recall.

Q. Was Mr. Dukes there at the time?

A. I don't recall that.

Q. And how did you manage to see it, were you there. [Tr. 436] watching it?

A. I came out of the court house front steps and walked down to the corner of the steps and I observed what was going on.

Q. Uh huh. You County Board of Supervisors meet about this problem?

A. No sir, we didn't.

Q. You all didn't discuss it?

A. No. sir.

By Judge Coleman: Mr. Bowling, I know you are not a loud talking man but I wish you would speak just a little louder please sir.

By Mr. Smith:

Q. You all didn't sit down and talk about these demonstrations that had been taking place on the court house lawn since January?

A. Not with the Board of Supervisors. I understood that the District Attorney and the Sheriff Department's was handling the matter.

Q. You had an office there in the court house?

A. Yes, we did.

Q. You went there every day?

A. Yes, I did.

Q. You passed that picket line?

[Tr. 437] A. Yes sir.

Q. And you didn't have a meeting or talk to your Board of Supervisors about this thing?

A. We made some observations but we didn't have any particular meeting called for that purpose.

Q. What were those observations?

A. Well, that it was more or less a nuisance and we

commented also that our people had conducted themselves in a very discreet manner.

Q. Our people you mean the law enforcement officials?

A. All the people in the community.

Q. I see. Now what were all those people doing there at the time of the arrest on the 10th, that is the people standing on the steps and across the street at the Sears and Roebuck?

A. Well, it was my observation and I had seen it happen several times that they would not permit large crowds to gather on the sidewalks.

Q. Uh huh. The question was what those folks were doing there?

A. I imagine they was curiosity as much as anything else.

Q. Watching the arrest of these picketers?

A. Well, I don't know that there was a crowd there at that particular time. There had been some crowds that gathered at prior times during the process of the probably [Tr. 438] two months that this was going on but they were immediately dispersed by the City Police.

Q. All of these people white that were onlookers?

A. Not all of them, no sir.

Q. Not all of them. So the picket line was sort of a nuisance to you I take it that's the way you all felt about it?

A. It was as far as the people trying to get in and out of the court house.

Q. Did it bother you?

A. Not to a great extent. It did some because I usually go for coffee across the street.

Q. Yes.

A. At Standard Drug Store and a lot of times it was a nuisance trying to get in and out without coming in contact with the marchers.

Q. Well, your office was up on you had to go up the front steps to get to it?

A. No sir.

Q. You down below?

A. No sir, I am on the second floor in the annex.

Q. You go up the front steps to get to your office don't you?

A. Yes sir.

Q. They weren't blocking that front step.

[Tr. 439] A. No sir. They was blocking the entrances to the sidewalk that leads to this entrance.

Q. Well, you can go to the annex from the main building can't you?

A. I sure can.

Q. And that's the usual way you would go isn't it?

A. No sir.

Q. It is not?

A. Has a separate entrance and that's the entrance I use.

Q. I see. But you had no trouble going up these, I am showing you now P-2, you had no trouble going up these steps right here and walking on up the steps to the court house did you?

A. I didn't come that way. I came from my office through the main court building—witness mumbling and unable to understand—

Q. Going out the main court house steps you would walk right down this way?

A. I walked to the corner there.

Q. This corner right here?

A. Right here on the steps of the court house.

Q. Showing you what is D-1. In other words you would walk to this corner right here?

A. Yes, that corner—

[Tr. 440] Q. (Interrupting) You would walk out of the where?

A. No sir, I came through the main court building.

Q. Then you would come down—

A. (Interrupting) They were blocking, if you will excuse me, they were blocking the entrance to the County Court Room under the step and also this entrance into the Home Economics office.

Q. You wouldn't have any trouble getting in and out of that court room by using the main entrance is that correct let's get that straight first and then we will go to the other?

A. I had no trouble getting in and out of the main court room. I had more trouble getting to my office from the other side of the street, Main Street.

Q. Now you had you ever have to go to the County Court Room?

A. Occasionally I do.

Q. Did you have any trouble getting in there?

A. I didn't go that way, I didn't come in from the street. The reason for this entrance here in the County Court Room being so important there are a lot of elderly people who use that and catch the elevator to go to the second floor.

Q. Right. Now, Mr. Bowling, you say that they were blocking the entrance to the court room. That is your [Tr. 441] opinion, is that not true?

A. That's my opinion the County Court Room.

Q. Uh huh. You never tried to use the entrance, that was just your opinion you are here giving the Court today?

A. I had observed it and that is my opinion, yes sir.

Q. Uh huh. Anybody ever complained to you?

A. Yes sir.

Q. Who was that?

A. Did have some complaints about that was inaccessible both offices.

Q. Uh huh. Did you pass these on to the Sheriff?

A. Well, the Sheriff was aware of it, I think we discussed it the idea that there had been some objection.

Q. And you felt that this was a nuisance that somebody ought to do something about?

A. Well, I felt it was a nuisance that shouldn't continue.

By Mr. Smith: Uh huh. That's all, thank you.

By Mr. Wells: (Witness excused.)

By Mr. Wells: Call Mr. Charles Morgan.

[Tr. 442] *Charles Morgan* called as a witness for and on behalf of Defendants, was sworn and testified as follows:

Direct examination.

By Mr. Wells:

Q. You are Charles Morgan?

A. Yes sir.

Q. Where do you live, Mr. Morgan?

A. 201 Sheryl Avenue, Petal, Forrest County, Mississippi.

Q. At Petal?

A. Yes sir.

Q. What official position, if any, do you hold in Forrest County?

A. Deputy Sheriff.

Q. How long have you been Deputy Sheriff sir?

A. January the 6th, 1964.

Q. Were you a peace officer prior to that?

A. No sir.

Q. This is your first pop at it?

A. Yes sir.

Q. Mr. Morgan, I direct your attention to Thursday, April the 9th, 1964, being the day prior to some arrests that were made on the grounds of the Forrest County Court House and ask you if you recall that occasion?

A. Yes sir.

[Tr. 443] Q. I will ask you if any persons what had been the situation around the court house for some time prior to that with reference to any picketing, Mr. Morgan?

A. We had had some.

Q. What happened on the afternoon of April 9th?

A. We read or I read a law that had been passed by the State of Mississippi.

Q. Involving?

A. Unlawful picketing.

Q. Of the court houses?

A. Yes sir.

Q. Who was present at the time you did that?

A. Sheriff W. G. Gray, Deputy Sheriff T. A. Woodward, District Attorney James Finch, and County Prosecutor James Dukes and myself.

Q. At whose request or instance did you read this?

A. Sheriff Gray's.

Q. And who did you read it to?

A. I read it to a group that were picketing at the court house.

Q. You remember approximately how many people were in that group at the time you read that?

A. The exact number no sir, but it was a pretty nice sized group.

Q. Beg pardon?

[Tr. 444] A. It was a pretty nice sized group.

Q. Pretty nice sized group. After you had read this law

to them did anybody else in your group have anything to say to them?

A. Yes sir. The Sheriff told the group that he didn't care to arrest anyone and to the best of my knowledge the group left.

Q. That he, that he didn't what?

A. He didn't want to have to arrest anyone.

Q. After you had read this act?

A. That's right sir.

Q. And the group left is that right?

A. They did.

Q. Now the next day was there any picketing there?

A. Yes sir.

Q. A smaller or larger group?

A. It was a larger group.

Q. Approximately how many people were in it?

A. I would say between 35 and 40.

Q. Now, Mr. Burkett, I mean Mr. Morgan, I am sorry, were you present when the Sheriff put these people under arrest?

A. Yes sir.

Q. I will ask you to go ahead and tell the Court just exactly what he said or what happened in connection with [Tr. 445] that arrest telling on what you yourself saw and heard?

A. They had made a couple of turns around this particular spot they were marching, several, I would say couple, three or four, something like that, Sheriff Gray stopped—

Q. (Interrupting) Who did he stop, who did he talk with?

A. He stopped Reverend John Cameron.

Q. I see.

A. And he told him that the law had been passed and it had been read to the group the previous day and asked them to disperse or spread out so they wouldn't be blocking the exit to the court house. He shook his head acknowledged the conversation and continued on marching. They made another loop when they got back Sheriff Gray told Reverend Cameron that he was under arrest for unlawful picketing and asked me to lead them to the Forrest County Jail.

Q. And you did that?

A. I did that.

Q. Was any other officer standing there next to Sheriff Gray?

A. No sir, only myself and County Prosecutor Dukes.

Q. Dukes was standing there when that was done?

A. That's right.

[Tr. 446] By Mr. Wells: Take the witness.

Cross-examination.

By Mr. Smith:

Q. Mr. Morgan?

A. Yes sir.

Q. Who authorized the arrests on the 10th of April of these people, was it did you make the arrests or did Sheriff Gray himself make it?

A. Sheriff W. G. Gray made the arrest.

Q. Have you ever arrested anyone under this statute?

A. I have not sir.

Q. Do you know whether or not a person that walks 10 feet apart in that area would be violating the statute?

A. Mr. Smith, you are asking me a hypothetical question.

Q. That's right, I did.

A. It's just according.

Q. According to what?

A. Well, just have to see the situation then I could answer your question, Mr. Smith. Only thing I can speak of what I seen.

Q. I will give you a hand as much as I can, Mr. Morgan. You take that situation in that area where those people were walking that same area, you take 10 of them and put them 10 feet apart there would they be violating the statute?

[Tr. 447] A. No sir, they wouldn't be violating the statute, I don't think they would be blocking the exit or entrance to the court house.

Q. All right take 15 people and put them 10 feet apart would they be violating the statute?

A. I don't think so—witness mumbling and unable to understand—.

By Judge Coleman: Please speak up louder please sir.

By Mr. Smith: A little louder please, Judge Coleman can't hear you?

A. I don't think they would as long as they spread out where other people could get in and out of the court house.

Q. What about 20 people?

A. If they were 10 feet apart?

Q. Yes.

A. I think that would still apply.

Q. All right what if they were about 5 feet apart?

A. Well, then I think you get into a little better conversation there.

Q. Well, now what if they was 35 people and they are still 10 feet apart, is that all right?

[Tr. 448] A. I don't think 35 people would coming up that particular side walk would, no sir.

Q. So you are reaching the limits there?

A. I am, yes sir.

Q. All right. And what if you are talking about 5 feet apart, you think that's too close?

A. Well, Mr. Smith, like I say not blocking the entrance where the people can get in and out of the Court House I don't think it would be?

Q. Well, what about Mr. Gray, does he share your views about what's good picketing there?

A. Sir, I can't speak for Sheriff Gray.

Q. He might differ from you about what's violating that statute who's violating and who isn't, is that right?

A. He's the Sheriff, yes sir.

Q. You all didn't set up any rules and regulations about when the statute is violated and when it isn't?

A. No sir.

By Mr. Smith: OK. I think that's all, Judge, thank you.

By Judge Rives: Any further questions?

By Mr. Wells: No further questions if the Court please.

[Tr. 449] (Witness excused.)

By Mr. Wells: If the Court please, if the Court will indulge me just a minute where I can get this copy of this amended statute out that's all I have to introduce and would be through.

By Judge Rives: We take judicial notice of that but we would like to have it.

By Mr. Wells: Yes sir, I thought you would like to have it.

By Judge Coleman: You may just hand it to the Clerk. Do you have anything else besides that?

By Mr. Wells: I have no further witnesses if the Court please.

(Defendants Rest.)

By Mr. Smith: Judge, we would like to have a little time for briefs you know some days to submit a brief to the Court on the legal issues.

By Judge Rives: But so far as witnesses?

By Mr. Smith: Oh yes, I'm through, I am not going to put on any rebuttal testimony.

[Tr. 450] By Judge Rives: You have nothing in rebuttal?

By Mr. Smith: No sir. I would like just some time for the briefs and we would also like to orally argue it at the Court's convenience at some future date.

By Judge Coleman: Couldn't you accomplish the same purpose in your written briefs?

By Mr. Smith: Well, it's just a matter of technique, Judge. I have always liked to brief a case as thoroughly as possible and then urge it in oral argument if its not too inconvenient for the Court. Of course its up to the Court. I just prefer to do it that way, I think its a better way of presentation.

By Judge Coleman: Judge Rives lives about 250 miles away and so do I and in the meantime we have got the Court of Appeals meeting all the time and I just wonder—

By Judge Rives: Couldn't you gentlemen have your oral arguments now?

By Mr. Smith: Well, actually I would prefer rather than, I think that we could orally argue it now, Your Honor, if [Tr. 451] you feel like it.

By Judge Rives: How much time would you require?

By Judge Coleman: I would like to hear Mr. Kinoy talk a while this afternoon. I say that in a most complimentary vein.

By Mr. Kinoy: Well, thank you, Judge Coleman. I am perfectly delighted that Judge Coleman knows that I never hesitate to take an opportunity to talk but my only thought is the time and the convenience of the Court, its been a long hard say.

By Judge Coleman: I would much rather have you arguing to me than against me, Mr. Kinoy.

By Mr. Kinoy: Thank you, Judge Coleman.

By Mr. Wells: Is the Court going to want briefs on this matter?

By Judge Rives: Yes, we would like to have briefs.

By Mr. Wells: May I suggest the Court please that I think it can be more helpful to the Court and to me certainly that we have this record transcribed before the [Tr. 452] briefs are required to be filed, it's so much help to me and I think to the Court to have the record transcribed before the brief is written?

By Judge Coleman: Well, we have just had one day's testimony though and I think that we can all really remember the essential outlines of the testimony. There's not much actual conflict in the testimony. There is a conflict in conclusions but there's not much conflict about what happened.

By Mr. Wells: Well, I am perfectly willing to submit it on briefs if the Court please.

By Mr. Smith: We would be willing to.

By Mr. Kinoy: Yes, we would leave that with the Court's discretion. If the Court would like to have oral argument we of course you know would be very pleased and if the Court would prefer briefs.

(Off record discussion between members of the Court.)

By Mr. Wells: Shall I have that marked as an exhibit. I have extra copies of it.

[Tr. 453] (Received in evidence and marked Defendant's Exhibit 5.)

By Judge Rives: Gentlemen, we would like to have about 30 minutes to the side oral argument this evening and then to be followed by briefs.

(This concluded the record in this cause and the Court Reporter was excused.)

NOV 30 1967

Supreme Court of the United States

JOHN F. DAVIS, CLERK

OCTOBER TERM, 1967

No. 699

JOHN EARL CAMERON, et al.,

Appellants,

—v.—

PAUL JOHNSON, ETC., et al.

**BRIEF FOR APPELLANTS ON APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR THE
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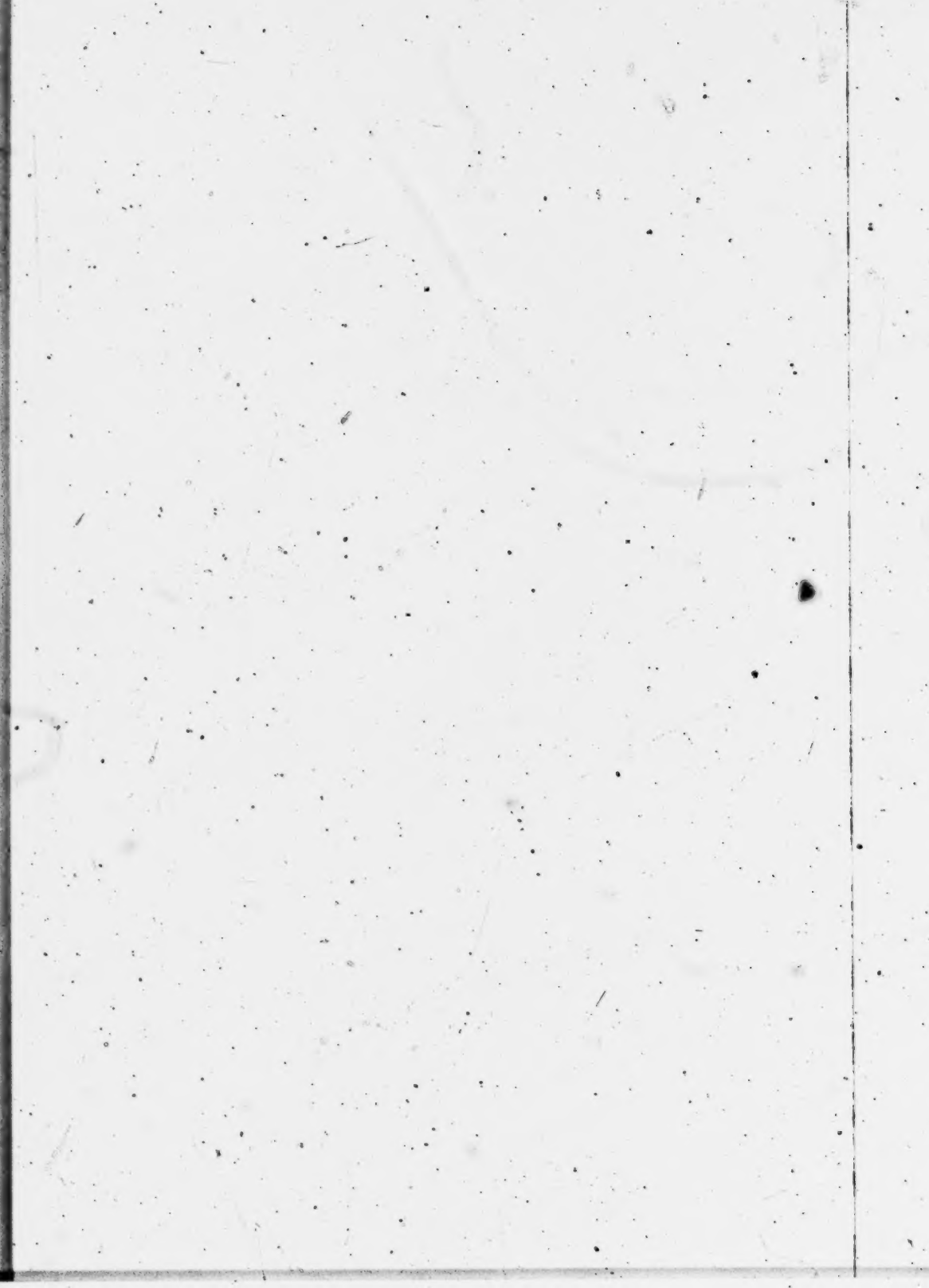
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Supreme Court of the United States

OCTOBER TERM, 1967

No. 699

JOHN EARL CAMERON, *et al.*,

Appellants,

—v.—

PAUL JOHNSON, ETC., *et al.*

BRIEF FOR APPELLANTS ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, HATTIESBURG DIVISION

Opinions Below

This case is before the Court for a second time. The *per curiam* and dissenting opinions of this Court which remanded the case to the three-judge Federal District Court for reconsideration in light of *Dombrowski v. Pfister*, 380 U. S. 479, are reported at 381 U. S. 741. The original majority and dissenting opinions of the three-judge Federal District Court for the Southern District of Mississippi, Hattiesburg Division, are reported at 244 F. Supp. 846 (S. D. Miss. 1964) and are set forth in the Appendix at Pages 20 and 31. The opinions of the District Court in response to the remand mandate of this Court are reported at 262 F. Supp. 873 (S. D. Miss. 1966). The majority opinion of Circuit Judge Coleman and District Judge Cox on remand is set forth in full in the Appendix at Page 41. The special concurrence of District Judge Cox

is set forth in full in the Appendix at Page 51. The dissenting opinion of Circuit Judge Rives on remand is set forth in full in the Appendix at Page 58.

Jurisdiction

The judgment and order of the District Court were entered on December 23, 1966. A notice of appeal to this Court was duly filed with the Clerk of the United States District Court for the Southern District of Mississippi on January 20, 1967. Probable jurisdiction was noted on Oct. 9th, 1967. Jurisdiction of this appeal is conferred on this Court by Title 28 U. S. C., Section 1253.

Statutes Involved

The validity of Mississippi House Bill No. 546, Laws of 1164, 1964 session of the Mississippi Legislature, approved by the Governor of Mississippi on April 8, 1964, is here involved. [Section 2318.5, Mississippi Code Annotated 1942 (1964 Supp.).] The text of this Mississippi state statute is as follows:

AN ACT TO PROHIBIT THE UNLAWFUL PICKETING OF STATE BUILDINGS, COURTHOUSES, PUBLIC STREETS, AND SIDEWALKS.

Be it enacted by the legislature of the State of Mississippi:

Section 1. It shall be unlawful for any person; singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to obstruct or [unreasonably] interfere with free ingress or egress

to or from any public premises, State property, county or municipal courthouses, city halls, office buildings, jails, or other public buildings or property owned by the State of Mississippi or any county or municipal government located therein or with the transaction of public business or administration of justice therein or thereon conducted or so as to obstruct or [unreasonably] interfere with free use of public streets, sidewalks or other public ways adjacent or contiguous thereto.

Section 2. Any person guilty of violating this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars (\$500.00), or imprisoned in jail not more than six (6) months, or both such fine and imprisonment.

Section 3. This act shall take effect and be in force from and after its passage.

NOTE: The word "unreasonably" in brackets in the text was added by amendment to the Statute on July 9, 1964.

The federal statutes involved in this case are: .

28 U. S. C. § 2283 Stay of State court proceedings.

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

42 U. S. C. § 1983 Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or

Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other property proceedings for redress.

Questions Presented

1. Whether Title 28 U. S. C. Section 2283 bars a federal injunction in this case?

2. Whether equitable relief is proper in light of the criteria set forth for such relief in this Court's decision in *Dombrowski v. Pfister*, 380 U. S. 479?

a) Whether the record of the remand hearing shows that the Mississippi statute here challenged has been selectively enforced in violation of the First and Fourteenth Amendments requiring federal injunctive relief in light of the criteria set forth in *Dombrowski*?

b) Whether the record of the remand hearing requires a conclusion that the Mississippi statute here challenged is overly broad and vague in the area of the First Amendment requiring federal injunctive relief in light of the criteria set forth in *Dombrowski*?

c) Whether the record of the remand hearing shows that the Mississippi statute here challenged has been applied "for the purpose of discouraging protected activities" requiring injunctive relief in light of the criteria set forth in *Dombrowski*?

Statement of the Case

Proceedings Below

1. This case is now before the Court a second time. After a decision by the original three-judge court, reported at 244 F. Supp. 846, an appeal was brought to this Court. In a *per curiam* opinion, the Court remanded the case to the district court "for reconsideration in light of *Dombrowski v. Pfister*, 380 U. S. 479". On remand the District Court was directed to consider "(1) Whether 28 U. S. C. §2283 bars a federal injunction in this case", and (2) if §2283 is not a bar, whether injunctive relief is appropriate in light of the criteria set forth in *Dombrowski. Cameron v. Johnson*, 381 U. S. 741 (1965). This is an appeal from the majority opinion and order of the three-judge Federal District Court rendered in response to the 1965 mandate of this Court.

Appellants originally instituted a plenary federal action on April 13, 1964, pursuant to Title 42 U. S. C. §§1971, 1983 and 1985 seeking a declaratory judgment and injunction against the enforcement of House Bill 546, 1964 session of the Mississippi Legislature, entitled "An act to prohibit the unlawful picketing of State buildings, courthouses, public streets and sidewalks." The bill was approved by the Governor on April 8, 1964, and was enforced by multiple arrests beginning on April 10, 1964. A three-judge district court was duly convened by the Chief Judge of the Court of Appeals for the Fifth Circuit. A hearing was held on April 29, 1964, on an application for an interlocutory injunction, but decision on that application was not required because of an agreement of the Attorney General of Mississippi to secure the postponement of trials for prosecutions under the statute until at least July 15, 1964.

An amended complaint in the nature of a class action (App. 7) and answers thereto were filed (App. 14, 16, 18) and the cause was submitted for final decree upon the amended complaint, the answers and affidavits filed by both appellants and appellees. No oral evidence was adduced. On July 11, 1964, a majority of the District Court entered an opinion and judgment dismissing the amended complaint. Circuit Judge Rives filed a separate dissenting opinion (App. 31).¹

On appeal to this Court, the judgment of the District Court was vacated "and the cause remanded for reconsideration in light of *Dombrowski v. Pfister*, 380 U. S. 479". Mr. Justice Black filed a dissenting opinion, joined in by Mr. Justice Stewart, and Mr. Justice Harlan. Mr. Justice White filed a separate dissenting opinion.

On October 15, 1965 a full hearing was held before the District Court at which oral testimony was adduced for the first time in the proceeding (App. 105 to 284).

On December 24, 1966, the majority of the District Court entered an opinion, conclusions of law, and a judgment dismissing the cause (App. 41, 56, 90). The majority of the District Court, Circuit Judge Coleman (replacing Judge Mize on the Court, then deceased) and District Judge Cox, found in response to the questions posed by this Court in the remand order that (1) 28 U. S. C. §2283 barred a

¹ Subsequent to the district court's opinion, all of the state prosecutions involved in this case were removed under 28 U. S. C. A. 1443 to the federal courts. Following the opinion of this Court in *City of Greenwood v. Peacock*, 384 U. S. 808 (1966), these cases were remanded to state courts. *Hartfield, et al. v. Mississippi*, 363 F. 2d 869 (5th Cir. 1966). They were subsequently stayed by the three-judge court and have presently been stayed pending the outcome of the appeal to this Court.

federal injunction in this case as to the "pending" state criminal proceedings and (2) that further injunctive relief as to future prosecutions under the state statute should not be granted.

The majority held that prospective injunctive relief was inappropriate in that the statute is not "so broad, vague and indefinite and lacking in definitely ascertainable standards as to be void on its face" (App. 48-49). As to the uncontested evidence adduced at the October 15th hearing that the statute had been selectively enforced by the State authorities, cf. *Cox v. Louisiana*, 379 U. S. 536, the majority held that "we are not here dealing with parades carried on by common consent on the public streets" (App. 49). Accordingly, the majority held that "under all the facts and circumstances of this case the principles announced in *Dombrowski* have not been brought into play [and] that injunctive or declaratory relief as to future enforcement of the statute is not justified" (App. 49). The majority further declined to exercise equitable jurisdiction on the ground that today in Mississippi, "Picketing to obtain the vote or to encourage others to do so is a thing of the past" (App. 50). The concurring opinion of District Judge Cox additionally concluded that the statute is not related "to impinging upon any First Amendment rights of these plaintiffs" (App. 53).

Circuit Judge Rives, dissenting, would have found in response to the questions posed by this Court that (1) 28 U. S. C. §2283 is no bar to a federal injunction in this case and (2) that injunctive relief was proper in light of the criteria set forth in *Dombrowski*. Circuit Judge Rives would have concluded "that an inspection of the record in this case clearly shows that section 2318.5 [House

Bill 546] was unconstitutionally applied. Moreover, the application of the statute in this case illustrates how vague the statute really is, and compels the conclusion that it is unconstitutional on its face" (App. 75). Judge Rives further would have found that "This is a case of selective enforcement. . . . If there is anything 'consistent' or if any 'uniformity' appears in this record, it is that section 2318.5 was consistently used to harass the civil rights movement in Hattiesburg" (App. 81). Circuit Judge Rives would have concluded accordingly, in response to the mandate of this Court, that injunctive relief was appropriate in light of the criteria of *Dombrowski*.

A notice of appeal was taken to this Court (App. 91) and subsequent thereto an order was entered by Circuit Judge Coleman staying all pending criminal prosecutions pending disposition of the appeal by this Court. Probable jurisdiction was noted on October 9th, 1967..

2. Statement of the Facts

Unlike the previous appeal to this Court, the case is now bottomed upon a full evidentiary hearing in the district court. The largely uncontested evidence developed at the hearing on the remand now permits consideration of the important issues of this case against the background of a fully developed factual record. The facts here set forth emerge from this record.

The demonstrations which resulted in the arrests and prosecutions under Section 2318.5 had their origin during January of 1964. For several days prior to January 22, the Council of Federated Organizations, hereafter referred to as COFO, the coordinating Council of Mississippi civil

rights organizations (App. 245), together with the Hattiesburg Ministers' Project for the National Council of Churches (App. 111, 159) distributed leaflets announcing that January 22nd would be "Freedom Day" in Hattiesburg and that a rally would be held to include peaceful picketing in order to protest racial discrimination in voter registration and to encourage Negro citizens to attempt to register to vote (App. 141, 156-57, 159, 165-66, 185, 191, 218, 223-24, 228, 245).

On January 22nd several hundred persons, Negro and white gathered near the courthouse, as did reporters from the local and national press. The purpose of the demonstration was, as announced, to protest racial discrimination in voter registration and encourage Negro citizens to attempt to register to vote (App. 191, 245). The courthouse was the site of registration. The demonstrators began to march around the courthouse and in doing so they may have interfered with the main entrance to the court building (App. 246). In order to facilitate access to the building, the County Sheriff then designated a "march route" which the demonstrators followed in picketing the courthouse (App. 219-20, 224, 246).

In order to facilitate access to the building the police set up barricades "upon the north and south side of the main sidewalk into the courthouse blocking that area off so that it [the picket line] would not block the main entrance to the Courthouse—and these people [were] allowed to picket unmolested within that given area" (App. 246). Thus, in order to facilitate access to the courthouse, the Sheriff had blocked off a small area to the right of the main entrance where picketers were allowed to continue

their activities (App. 144-43, 197, 220, 224, 246).² The demonstrators confined their picketing to this designated area and with tacit police and Sheriff "approval" the picketing continued subsequent to January 22. During the early period of picketing in February the demonstrators sang, chanted, prayed and preached (App. 219, 224, 245-46).

Picketing continued, although with fewer demonstrators into April of 1964. It is uncontested that from April 1 until April 9th pickets were present every day except Sundays and the number varied from 7 to 20 (App. 148, 140, 167, 220, 225, 246). One witness testified that at times it reached as many as 38 or 39 (App. 224).

Unlike the earlier mass picketing where hundreds were present, the picketing in April was entirely quiet. The pickets did not sing, chant, pray or preach. "The only noise" they "made was an occasional comment to one another in normal conversation." They in no way made any noise that would disturb the transaction of business within the courthouse (App. 123-26, 159-60).

The pickets marched steadily but slowly. They made it a point to be courteous to persons desiring to pass them and never blocked anyone from passing them (App. 169). This was the situation which persisted without incident until April 9 (App. 245-248).

On April 8, 1964, the legislature of the State of Mississippi passed, and the Governor signed, House Bill 546, "An Act to Prohibit the Unlawful Picketing of State Buildings, Courthouses, Public Streets and Sidewalks". On

² Since in Circuit Judge Rives' words "it is difficult to verbalize the scene", he reproduced in his opinion a scale drawing (App. 71). We do not understand appellees to contest its accuracy.

April 9, 1964, House Bill 546 was delivered by messenger from the State Capitol to the law enforcement officials of Forrest County Mississippi (App. 254-55).

Mr. James Dukes, Forrest County Attorney, Mr. Bud Gray, Forrest County Sheriff and a Forrest County Deputy Sheriff, immediately upon receipt of the Bill went to the site of the demonstration.

On that day a small group was picketing, confining as usual their march to the area within the barricades erected months before by the Forrest County law enforcement authorities (App. 143-44). As was their usual practice, the demonstrators started "to disband the picket" line around four o'clock. At that moment several police officers arrived and "began to break down the wooden barriers" which had previously delineated their line of march. Sheriff Gray accompanied by Mr. Dukes, the County Prosecuting Attorney, and Deputy Morgan approached the group asking for their attention. A copy of section 2318.5, which had just been passed by the Mississippi legislature and had just been received in Hattiesburg, was read to them. The Sheriff then gave them five minutes in which to disperse, which they did (App. 121, 144, 160-61, 246-248).³

On the morning of April 10, approximately thirty-five to forty persons appeared to resume their daily peaceful picketing activity (App. 129, 199, 209). This number in-

³ The majority opinion below, perhaps inadvertently, creates the clear impression of restrained forbearance on the part of the state officials in enforcing the statute against appellants. Thus the majority in its statement of "facts" says, "At last, on April 10, 1964, the Sheriff read the statute to the participants and warned them that if they violated it he would have no choice but to arrest them" (App. 44). The majority does not mention that the statute was *only* passed on April 8th and rushed to Hattiesburg for immediate application (App. 121, 143-44, 161, 246-47).

cluded not only citizens of Hattiesburg but also northern clergymen who had come to Mississippi in response to a call from the National Council of Churches to assist and encourage non-discriminatory voter registration in that State (App. 112, 141, 142, 158-59).

The demonstrators assembled shortly after 9 A.M. at the COFO headquarters. They lined up approximately 10 feet apart and walked to the Courthouse (App. 147).

The pickets arrived at the corner across from the Courthouse at about 10 A.M. where they found a normal flow of traffic. They "waited to cross the street until the policeman had halted traffic as he did for all pedestrians." They "crossed with other pedestrians and then began to march in the area previously designated for picketing in a very orderly fashion. Because of the previous afternoon they were "more frightened" than before and "for that reason" they "were more orderly and quiet" than previously (App. 122, 162, 179, 192, 249-250).

When they arrived at the courthouse, the demonstrators were met by crowds of whites who had come to view the anticipated arrests (App. 122-23, 144-45, 161-62, 174-75). These onlookers filled the sidewalks of the streets around the courthouse and spilled over onto the steps of the courthouse making access to the building through the main entrance impossible (App. 122-23, 144-45, 161-62, 174-75).⁴

On their arrival at the courthouse the demonstrators discovered that the police barricades, which had been erected and left in place since January, to delineate the permissible march route, had been removed (App. 121). The demonstrators nevertheless proceeded to the exact site

⁴ None of these spectators was arrested for violation of House Bill 546 (App. 145, 162, 267).

patrolled by them since January and there began their orderly circling of the area (App. 122-23). Within minutes all the demonstrators were ordered to proceed to the sheriff's office under arrest for violation of House Bill 546.⁵

The picketers were then placed in jail for obstructing free ingress to or egress from the courthouse.⁶ At the time of the arrest the area immediately adjacent to the picketing area was congested with spectators. There were 20 or 25 people standing on the main steps of the courthouse and a "tight knot of people" were "blocking the sidewalk." None of these persons were arrested or asked to move on (App. 122-23, 144-45, 161-62, 171-72, 174-75).

Although the appellants were arrested for demonstrating and mass picketing "so as to obstruct the entrance to the courthouse" (opinion of Judge Rives, (App. 74, 125)) there was virtually no testimony at the hearing to prove actual obstruction. The defendants produced one witness who testified that in making her way along the sidewalk to the courthouse entrance on the morning of April 10, 1964, she was "weaving back and forth" in and out of the picket line for a distance in order to reach the door (App. 270). This was the only witness brought forward by defendants to "prove" plaintiffs' violation of House Bill 546. As Circuit Judge Rives noted in his dissenting opinion, "Whatever 'obstruct' may mean, here, clearly Mrs. Burkett was not

⁵ The testimony as to whether any warning was given them is in some dispute. The appellees' witnesses testified that Sheriff Gray warned the pickets that they were violating section 2318.5, and when they failed to disperse he placed them under arrest (App. 250-51). Appellants' witnesses testified that they were placed under arrest without warning or that, in any event, if there was a warning they did not hear it (App. 123-24, 163, 177, 201, 221).

⁶ No question of resisting arrest was involved in any way (App. 124).

blocked or prevented from making her sojourn to the County Agent's Office. Nor is there a single shred of evidence that the pickets were unwilling to let persons pass at any time before or during the demonstration" (App. 76).⁷

⁷ The majority of the District Court held that "the blocking of the sidewalks and entrances and interfering with the free use of the courthouse sidewalks and entrances was the gravamen of the offense" (App. 44). Circuit Judge Rives' description of the record testimony of "obstruction" is in great detail and is in no way contradicted by the majority in any specifics (App. 76): "The main thrust of the defendants' argument is that the pickets obstructed the entrance to the County Court Room, designated as 'B' on the drawing, and the entrance to the Home Demonstration Office, designated as 'A' on the drawing. I will treat the Home Demonstration Office first."

"The Home Demonstration Office is a small office with only one entrance. It has no inside entrance to the interior of the Courthouse. Mrs. Pearl Burkett is the Home Demonstration Agent. She leaves her office and goes to the County Agent's office about four or five times each day (App. 269). To get there, she leaves her office and proceeds along the walk to the main steps of the Court House and proceeds up those steps to the second floor. The sidewalk at one point narrows to as little as 3.8 feet.

"On the morning of April 10 during the picketing, Mrs. Burkett found it necessary to go to the County Agent's office. She testified (App. 270): 'I started the regular route and they were so close together that I had to wait for just a moment to get in line and I fell in line with them and started weaving back and forth until I reached the front steps and then dropped out of the line.' Her testimony is, of course, the only real testimony of obstruction contained anywhere in the record (App. 124). While the walkway is wide enough at most points for her to walk past the pickets, for about six feet it is only 3.8 feet wide. To be comfortable one would most likely have to walk single file in line, one person behind another, at that point. Thus, she had to weave back and forth by falling 'in line with them' for a few steps. They were not discourteous; she was not bumped or molested; they were peaceful and orderly. Whatever 'obstruct' may mean, here, clearly Mrs. Burkett was not blocked or prevented from making her sojourn to the County Agent's Office. Nor is there a single shred of evidence that the pickets were unwilling to let persons pass at any time before or during the demonstration.

"In the past the pickets had seen persons come out of the main steps to the Court House and pass them and the Home Demonstration Office on their way to the parking area behind the Court House

Furthermore on that afternoon, April 10, 1964, a Hattiesburg resident, Mrs. Mary Williams, accompanied by nine school-age youngsters appeared at the previously designated march area near the courthouse to continue the peaceful picketing (App. 182-83). Within moments of their

(App. 120, 142). The pickets were never told that they blocked the Home Demonstration Office door. One witness recalled Mrs. Burkett passing them on the way into her office on several mornings. She would greet them 'cordially' (App. 142). Another picket recalled at least three persons 'who had easy access to that door ['A'] who walked by me on the way to business in that particular office' (App. 160, 167). These earlier instances are of continuing importance since Mr. Dukes testified that had the law been in effect, the earlier picketing would have violated it (App. 257).

"The problem of blocking the entrance to the County Court Room is even clearer. Reverend Brown, like the other witnesses for the plaintiffs, testified that the entrance to the County Court Room was never blocked (App. 114, 119, 169, 141-42, 159-60, 167). The defense presents an appealing picture as to the blocking of entrance 'B'. Mr. Selby Bowling, President of the Forrest County Board of Supervisors, was attracted by 'curiosity as much as anything else' to the steps of the Court House on the morning of April 10, where he watched the arrest of the demonstrators who he described as a 'nuisance' (App. 276). The reason entrance 'B' must be kept open is, according to Mr. Bowling, that 'there are a lot of elderly people who use that and catch the elevator to go to the second floor.' This use of the ground floor elevator, in his 'opinion' was prevented by the pickets (App. 277-78). 'Of course, the Court House is symmetrical and there is an entrance to the County Court Room, identical to the one marked 'B', on the opposite side of the Court House steps, which entrance is marked 'R' in the drawing, p. 11, *supra*. This entrance was in no way affected by the picketing. Surely we cannot silence a peaceful group in the orderly exercise of their freedom of speech just because they pass in front of one of several entrances to a court house (App. 125-26). Here, entrance 'R' was available, or the main entrance, or even the back entrance from the parking lot.

"The only evidence in this record of this blockage of entrance is the testimony of Mr. Dukes, who testified that, prior to the arrests on the morning of April 10, he tested the obstruction by attempting to walk against the current on the line of pickets. He said he could not (App. 250). I do not find this testimony sufficient to overcome the weight of all the other testimony contained in this record" (App. 75-78).

arrival, they too were ordered to jail (App. 183-84). There were *no* witnesses called by Appellees to testify to any obstruction on this occasion. As noted above, the one witness who spoke of "weaving" her way into the courthouse (App. 270), spoke of the *morning* of April 10. No one gave any evidence of obstruction at all on the afternoon of April 10 when these ten additional demonstrators were arrested.

Further arrests occurred on the morning of April 11, 1964. On that day, nine demonstrators appeared at the prior designated area and began to march peacefully (App. 209). Upon being warned by the sheriff that they were violating the new anti-picketing statute, two of the demonstrators left (App. 209). As the remaining seven people continued to walk slowly around the march route, they too were arrested (App. 209). Again there was no testimony by anyone relating to obstruction on this occasion.

The picketing continued six days a week from April 11 through May 17. In that period, no arrests for violation of House Bill 546 were made (App. 227, 252).

On May 18, 1964, nine demonstrators were picketing, as always within the previously designated march area at the side of the courthouse (App. 263-64). All nine of them were arrested for violation of House Bill 546. There, again, there was *no* evidence given by any witness of obstruction or blocking ingress to or egress from the courthouse.⁸ After the arrests of May 18th, all picketing stopped (App. 211).

⁸ It is of some interest that the majority opinion below does not even mention the arrests made on April 10 in the afternoon, on April 11 and on May 18. As a result, the majority does not discuss the significance of the total lack of evidence of obstruction on all

Furthermore, the record is uncontested that the Mississippi statute here challenged has been selectively enforced only against civil rights demonstrators. Subsequent to the civil rights arrests here detailed, several "parades have been held in Hattiesburg" (App. 195, 235-36, 264-65). On these occasions, the streets of the downtown area of the City, including the locale of the courthouse, have been cordoned off during daytime business hours and the sidewalks have been obstructed by crowds of spectators viewing the parades (App. 195, 235-36, 264-65).

On direct examination, plaintiff Reverend John Cameron testified that "there have been several school parades through . . . the main area of the City", and that "[t]he

of these occasions. Cf. *Thompson v. Louisville*, 362 U. S. 199. Again, Circuit Judge Rives' detailed analysis of the factual record as to these arrests is uncontested by the majority:

"The danger occasioned by section 2318.5 is made even more evident when we examine the further arrests made on the afternoon of April 10, on April 11, and on May 18, not one of which groups exceeded 10 persons. These pickets were arrested because they walked so closely together that no one could pass between them, thus they obstructed ingress to and egress from the Court House.

"Picture 10 persons walking very closely together, which would occupy a space of about 16 to 20 feet. Now picture this group at the point where I have marked 'T' on the drawing, just above and to the left of the flag pole. If they were there, the entire remainder of their route would be left open both in front and in back. Can these people logically be arrested for obstructing points 'B' and 'A' when the majority of their time in walking about the flag pole will leave the walkways totally unobstructed? I think not.

"To illustrate, take the group arrested on the afternoon of April 10. Mrs. Mary Williams went to the Court House with a group of nine other persons, ranging in age up to 18 or 21. The 10 of them then proceeded to picket around the flag pole. Mrs. Williams testified (App. 184):

Q. Did anybody try to go in or out of the court house while you all were there? A. No, they didn't, wasn't no one there to enter the court house, we were just on the line picketing.

They were arrested for obstructing ingress to and egress from the Court House under section 2318.5" (App. 78-79).

streets were blocked off in order for the parade to proceed" (App. 195). In conducting cross examination, Mr. Wells, Assistant Attorney General, of the State of Mississippi commented, "Well, they weren't demonstrations and picketing type parades [sic] it was just a parade like most cities and towns have" (App. 195).

The County Prosecuting Attorney, Mr. Dukes, appearing as a witness for the defendants fully conceded the selective enforcement of the statute in the following testimony:

"Q. Now. Mr. Dukes, have there been any parades in Forrest County particularly in Hattiesburg since the arrests of May 18th? A. Yes, sir, parades schools (sic) which included white and colored bands, school children, cheer leaders, floats and so forth.

Q. Do these parades ever block the streets? A. Well, I am sure they did but I didn't ever hear anybody complain about it though.

Q. Did you ever advise Bud Gray [the Sheriff] that they were in violation of this statute? A. No, sir, because I was informed they had permission of the City, the mayor and commissioners.

Q. Now does this statute contain anything about getting a permit to hold a parade? A. No sir, sure doesn't" (App. 264).

Cf. *Cox v. Louisiana*, 379 U. S. 536.⁹

⁹ Although both Mr. Dukes and Mr. Wells advert to the fact that these other demonstrations took place with the permission and concurrence of the city officials it should be noted that House Bill 546 contains no provision for obtaining a license or other approval for demonstrations and the record contains no mention whatever of any other parade licensing provision under which the community demonstrations were authorized. Cf. *Cox v. Louisiana*, *supra*, at 556.

Mr. Wells, the Assistant Attorney General of the State, further characterized the "parades" which are permitted by the State authorities in the following manner in cross-examining Reverend Cameron, one of the Appellants:

"By Mr. Wells:

"Reverend Cameron, these parades you are talking about are parades where people had made arrangements with the City to participate and have just what's a normal parade like you have a parade for the fair and Christmas and things like that, wasn't it?" (App. 195).

Again in the cross-examination of Reverend Cameron, the Assistant Attorney General made amply clear the underlying motivation of the selective enforcement of the statute:

"Q. You don't class that kind of parade in the same category as picketing around a court house, do you?"

[objection was overruled]

Q. You don't put that in the same class with the type of picketing you all were doing, do you? A. Well, it was not for the same purpose.

Q. That's right." (App. 196).

The majority of the District Court does not dispute the factual concessions of selective enforcement of the statute by the Appellees. They merely conclude that these tolerated activities which admittedly obstruct the streets are "customarily enjoyed by the community as part of ordinary community activities" and that they are "parades carried on by common consent on the public streets" (App. 49).

The essential uncontested facts which emerge from a detailed examination of the record of the evidentiary hearing which now bottoms this appeal are:

1. The demonstrations, which continued over a period of approximately four months for the purpose of protesting discrimination against Negro citizens in voting and encouraging Negro citizens to register to vote, were at all times entirely peaceful.¹⁰

2. The demonstrators at all times remained within the express area designated originally by the law enforcement officers who had selected that area so that the demonstrators, while marching, would not obstruct access to the courthouse.

3. The statute here under challenge, as conceded by the appellees in open court, has been selectively enforced so as to arrest only persons engaging in these activities and to deter others from undertaking such activities.

Summary of Argument

As in *Dombrowski v. Pfister*, 380 U. S. 479, this appeal once again calls upon the Court "to settle important questions concerning federal injunctions against state criminal

¹⁰ The peaceful and dignified character of the picketing on the critical morning of April 10th is evidenced in the pictures of the demonstrators (App. 95, 96, 98) taken, according to Mr. Wells, Assistant Attorney-General of Mississippi, and counsel for appellees, "a short time, a very short time prior to the arrests" (App. 117). These pictures were originally filed in this action as exhibits attached to affidavits introduced on behalf of the defendant state law enforcement officers. Copies were furnished to plaintiff-appellants' counsel by appellees and were introduced, "without objection" by the defendant-appellees (App. 117), by the plaintiff-appellants as plaintiffs' exhibits at the hearing below.

prosecutions threatening constitutionally protected expression" 380 U. S. at 483. The case is before the Court for the second time. In the original appeal to this Court, the cause was remanded for reconsideration in light of *Dombrowski* and the district court was directed to consider two questions: (1) whether 28 U. S. C. Section 2283 bars a federal injunction in this case and (2) if Section 2283 is not a bar, whether injunctive relief is appropriate in light of the criteria set forth in *Dombrowski*. These questions involve serious considerations affecting the duties and responsibilities of the Federal Judiciary in protecting the free exercise of fundamental constitutional freedoms.

—I—

Title 28 U. S. C. Section 2283, the federal anti-injunction statute, does not bar a federal injunction in this case.

1. Section 2283 is a codification and statutory reflection of the rules of comity and must be read in conjunction with the judicial principles developed to govern the Federal system. *Dombrowski v. Pfister* teaches that a federal court of equity has the power and duty, within the principles governing the federal system, to restrain a state court criminal proceeding which "unaffected by the prospects of its success or failure" creates a "chilling effect upon the exercise of First Amendment rights" 380 U. S. at 487. Accordingly an injunction against such a state court criminal proceeding is not *barred*, but is rather *required*, under the rules of comity which govern the federal system and are embodied in the federal anti-injunction statute, Section 2283.

2. The prior decisions of this Court support the conclusion that an injunction against a state criminal proceeding which meets the *criteria* of *Dombrowski*, and is brought under Title 42 U. S. C. 1983, the 1871 Civil Right Act, is an injunction "expressly authorized by Act of Congress" and therefore an exception to Section 2283.

3. One of the central statutory purposes for the enactment of Section One of the 1871 Act "to enforce the Fourteenth Amendment", the forerunner of Section 1983, was to create a federal remedy which could protect the race of freedmen from abuse and perversion of state court machinery in the Southern states resulting in a deprivation of their newly granted constitutional and statutory rights. Section 1983 was thus designed to be a principal weapon in the struggle for federal primacy in the protection of fundamental national constitutional rights. It should be interpreted today "in accordance with its historical design", which "remains vital and pertinent to today's problems". *United States v. Price*, 383 U. S. 787 (1966).

4. This Court has already indicated in *City of Greenwood v. Peacock*, 384 U. S. 808 (1966) that Section 2283 would not bar injunctive relief in this case. In *Peacock*, the Court indicated clearly that a *Dombrowski* injunction was a "remedy available in the federal courts" to restrain a state prosecution or trial which "would itself deny their [the petitioners] rights protected by the First Amendment" 384 U. S. at 829. Both majority and dissenting Justices appear to agree on the availability of an injunction against pending state criminal proceedings if the criteria set forth in *Dombrowski* are present.

—II—

Equitable relief is proper in light of the criteria set forth in *Dombrowski*.

Dombrowski sets forth two separate and distinct categories of circumstances in which the exercise of federal equity power to restrain state criminal proceedings is appropriate. The first branch of *Dombrowski* relates to situations in which state statutes are challenged on their face as "overly broad and vague regulations of expression". 380 U. S. at 490. The second branch of *Dombrowski* relates to situations in which state statutes may be otherwise valid but are being "applied for the purpose of discouraging protected activities" 380 U. S. at 490. State proceedings, threatened or brought, under either of these two branches, create a "chilling effect upon the exercise of First Amendment rights" 380 U. S. at 487, properly invoking federal equitable relief.

The question as to whether relief is proper in this case in light of the criteria of *Dombrowski* now comes to the Court for the first time based upon a full evidentiary record. This record reveals that under the criteria set forth in both branches of *Dombrowski* injunctive relief is proper and necessary.

1. The uncontested evidence at the remand hearing now reveals that the Mississippi statute here challenged was selectively enforced by the state authorities in violation of the First and Fourteenth Amendments. The uncontested evidence of selective enforcement is even stronger than the evidence which led the Court to strike down the Louisiana "obstruction" statute in *Cox v. Louisiana*, 379 U. S. 536. The record reveals that this pattern of enforcement of the

state statute has resulted in "an invidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment" and permits "censorship in a most odious form, unconstitutional under the First and Fourteenth Amendment". *Cox v. Louisiana*, 379 U. S. at 581 (concurring opinion of Mr. Justice Black).

2. The pattern of enforcement indicating the "setting in which the statute operates", *NAACP v. Button*, 371 U. S. 415, developed at the hearing, as well as the insertion of the word "unreasonably" in the statute by legislative amendment after the first appeal was considered, raise new and serious questions of unconstitutional vagueness and overbreadth beyond those considered by those members of the Court who touched on constitutional questions in their opinions in the first appeal. This new dimension renders the statute "so broad as to be unconstitutionally vague under the First and Fourteenth Amendments", *Cox v. Louisiana*, 379 U. S. at 571. The statute as construed and applied by the enforcing officers "does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat", *Cox v. Louisiana*, 379 U. S. at 579.

3. The criteria in *Dombrowski* for the exercise of federal equity power where the challenge is to an overbroad statute in the area of free expression have been fully met. This record reveals vividly the "danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute of sweeping and improper application" *NAACP v. Button*, *Dombrowski v. Pfister*, *supra*. Such a statute stands condemned under the opinions of this Court from *Edwards v. South Carolina* to *Whitehill v. Elkins* in this Term of Court. Federal equitable relief against efforts

to enforce an overly broad and selectively enforced state criminal statute touching on the area of the First Amendment is wholly appropriate under the criteria set forth in *Dombrowski*.

4. The Mississippi statute here challenged is being "applied for the purpose of discouraging protected activities". *Dombrowski v. Pfister* at 490. Injunctive relief is therefore wholly proper under the second branch of *Dombrowski*.

a) The virtually uncontested evidence reveals that the enforcement of the statute was not related to actual "obstruction" or "interference" but solely involved efforts to penalize constitutionally protected activities. The record shows no evidence of actual obstruction of the streets or entrances. The state had "no expectation of securing valid convictions" 380 U. S. at 490. The convictions would have been void under the rule of *Thompson v. Louisville*, 362 U. S. 199 and *Shuttlesworth v. Birmingham*, 382 U. S. 87. The record further shows that "the circumstances in this case reflect an exercise of . . . basic constitutional rights in their most pristine and classic form". *Edwards v. South Carolina*, 372 U. S. at 235, and that here, the state statute "was deliberately and purposefully applied solely to terminate the reasonable, orderly and limited exercise of the right to protest" Negro discrimination in the right to vote prohibited by the Fifteenth Amendment, cf. *Brown v. Louisiana*, 387 U. S. at 147.

b) The failure of the authorities to warn the demonstrators that they were obstructing the entrances to the courthouse further indicates that "obstruction" was not the reason for the arrests, but rather the "discouraging of protected activities". *Dombrowski v. Pfister*, *supra*.

c) The record further shows that the city authorities had in practice sanctioned the type of activity for which appellants were then arrested. The actual area in which appellants marched when the statute was enforced against them had previously been designated by the city authorities as an area in which they were permitted to march. This is "an indefensible sort of entrapment by the State" *Cox v. Louisiana*, 374 U. S. at 571. It further reveals that these prosecutions are not pressed with any "real expectation of ultimate success" *Dombrowski v. Pfister* at 490. The purpose of the enforcement of the statute was not to cure a non-existent "obstruction" to egress or ingress. It was to discourage the appellants from any picketing at all. Such action is "intolerable under our Constitution". *Brown v. Louisiana* at 142.

d) The remand hearing revealed that enforcement of the Mississippi statute has had a "chilling effect upon the exercise of fundamental constitutional rights" requiring the invocation of federal injunctive relief under the criteria of *Dombrowski*. Federal equity relief remains necessary today under the circumstances of this case. The objectives of Congress in passing the Voting Act of 1965 require for their full success the active participation of the Negro citizens of Mississippi in the electoral and registration processes. But as the United States Civil Rights Commission has pointed out "the inhibiting results of mass disenfranchisement are not easily overcome". The free and unfettered utilization of fundamental First Amendment liberties remain critically necessary to the Negro citizens of Mississippi if the objectives of the Congress expressed in the 1965 Act are to be fulfilled. This record, accordingly, brings before the Court a classic situation for the invocation of the criteria for injunctive relief set forth in the second branch of *Dombrowski*.

POINT I

28 U. S. C. Section 2283 does not bar a federal injunction in this case.

1. *Section 2283 does not bar relief in this case under the principles of comity embodied in that statute*

The original judgment in this case was vacated and the cause remanded for reconsideration in light of *Dombrowski v. Pfister*, 380 U. S. 479. On this remand the district court was directed to "first consider whether 28 U. S. C. Section 2283 bars a federal injunction in this case" 381 U. S. at 741. The response of the majority of the lower court not only failed to grasp the essence of Section 2283, the federal anti-injunction statute, but disregarded entirely this Court's direction to consider the question involved "in light of *Dombrowski v. Pfister*".

The majority below viewed 2283, the 1948 revised version of Section 265 of the Judicial Code of 1911¹¹ as an inflexible limitation upon the power of federal courts to enjoin pending state court criminal proceedings. Applying this analysis the majority below concluded that 42 U. S. C. 1983 under no circumstances creates "an exception to the anti-injunction statute". The lower court offered no rationale for this assumption but chose instead to rest solely upon the decision of the majority of the Fourth Circuit sitting *en banc* in *Baines v. City of Danville*, 397 F. 2d 579 (1964). But this conclusion not only misconceives the Fourth Circuit's own analysis of the thrust of the federal

¹¹ Both statutes relate back to Section 5 of the Judiciary Act of 1793, Ch. 22, 1 Stat. 333, 335. See Revisor's Note, 28 U. S. C. 2283. See also *Toucey v. N. Y. Life Insurance Co.*, 314 U. S. 118.

anti-injunction statute. It ignores the direction of this Court that this analysis itself must be reconsidered "in light of *Dombrowski v. Pfister*".

What the majority below has failed to grasp is that any analysis of the impact of Section 2283 upon a particular request for the invocation of federal equity power must rest upon the threshold recognition, hitherto unchallenged in this, or any court, that Section 2283 and its statutory predecessor, Section 265, are not jurisdictional statutes. They are codifications and statutory reflections of principles of comity and equity. As this Court said in respect to Section 265 in *Smith v. Apple*, 264 U. S. 274, "It is not a jurisdictional statute . . . In short it goes merely to the question of equity in the particular bill".¹² The majority below seeks to avoid "any dissertation on 'jurisdiction' or 'comity'" (App. 46), but these conceptual considerations cannot be so lightly disregarded when they are at the heart of a misconception, which if not rejected, results in undermining the ability of the "independent federal judiciary" to meet its highest obligation as "guardians" of the fundamental rights of the people. Cf. *Chapman v. State of California*, — U. S. —, 87 S. Ct. 824, 826 (1967, opinion of Mr. Justice Black, for the Court).

The crux of the matter is that 2283, like its statutory predecessor Section 267, cannot be read as a rigid, "mandatory . . . prohibition". See majority opinion below (App. 46). Rather, as Professor Moore has pointed out "[P]rop-

¹² See also *Sovereign Camp Woodmen of the World v. O'Neill*, 266 U. S. 292, 45 S. Ct. 49, 67 L. Ed. 293; *First Nat. Bank & Trust Co. of Racine v. Village of Skokie*, 7 Cir., 173 F. 2d 1; *American Optometrick Ass'n v. Ritholz*, 7 Cir., 101 F. 2d 883; *Jamerson v. Alliance Ins. Co. of Philadelphia*, 7 Cir., 87 F. 2d 253; *T. Smith and Son v. Williams*, 5 Cir., 275 F. 2d 397.

erly considered Section 2283 as a whole does not go to the jurisdiction of a federal court, but is an affirmation of the rules of comity, and hence should be read in conjunction with the judicial principles developed for our dual system of courts". Moore, Commentary on the Judicial Code, Sect. 03 (4a) p. 407.¹³

Thus *Baines v. City of Danville*, the very opinion the majority below relies upon to bottom its conclusion that 2283 absolutely bars federal injunctive relief in this case, offers an analysis of the anti-injunction statute which leads inescapably "in light of *Dombrowski v. Pfister*" (cf. the mandate of this Court in the first appeal), to the conclusion reached by Circuit Judge Rives that "under the circumstances of this case" 2283 is *no* bar to federal injunctive relief.

For in *Baines*, the Fourth Circuit, recognizing that 2283 "is not a jurisdictional statute" pointed out that "since the statute was fathered by the principles of comity, it has been held that the statute should be read in the light of those principles, and, though absolute in its terms, is inapplicable in extraordinary cases in which an injunction against state court proceedings is the only means of avoiding grave and irreparable injury". 337 F. 2d at 593. However, the Fourth Circuit majority, deciding its case in the summer of 1964, concluded that the "principles of comity" prohibited any federal interference with state court criminal proceedings under the authorization of the equity cause of action created in the Federal civil rights statute, Sec-

¹³ See the comment of Circuit Judge Wisdom in *Southern California Petroleum Corp. v. Harper*, 273 F. 2d 715, 5 Cir. (1959), "Section 2283 is essentially a rule of comity, and the demand that a federal court interfere with state court proceedings is directed to the discretion of the Court".

tion 1983. This conclusion rested upon the assumption that "in every case before the Supreme Court in which federal interference with state court proceedings has been premised upon asserted denials of civil rights, the Supreme Court has required or sanctioned federal forbearance". 337 F. 2d 579. Thus the Fourth Circuit in August, 1964, reading 2283 "in light of" the principles of comity which underlie the Federal system, acted upon the assumption that these principles require "federal forbearance . . . exemplified by *Douglas v. City of Jeannette*, 319 U. S. 157", 337 F. 2d at 593.

But a reading of the *Baines* opinion reveals the essential weakness of the majority below in this case, for their opinion wholly ignores the subsequent holding of this Court in *Dombrowski*, and fails to "reconsider" conclusions in respect to the impact of 2283, in light of the teachings of that case.

Dombrowski teaches that where state court criminal proceedings are utilized for the purpose of deterring or intimidating citizens from exercising fundamental federal rights "the fact of the prosecution, unaffected by the prospects of its success or failure" has a "chilling effect upon the exercise of First Amendment rights" 380 U. S. at 487. The protection of these constitutional freedoms, upon which the very life of a democratic society depends, compels the assertion of federal power to restrain such proceedings. This is true whether the state criminal proceedings draw their authorization from a statute vague or overly broad on its face in the area of the First Amendment, or are instituted under color of otherwise valid state statutes but are "part of a plan to employ arrests, seizures and threats of prosecution under color of statutes to

harass" citizens in the exercise of their constitutional rights. *Dombrowski v. Pfister*, 380 U. S. at 482. See also Mr. Justice White, dissenting in *Cameron v. Johnson*, 380 U. S. at 755 and Mr. Justice Black, dissenting in *Cameron v. Johnson*, 380 U. S. at 749.

Whatever may be the outer reaches of *Dombrowski*¹⁴ its essential teaching is clear. In their concurring opinion in *Mills v. Alabama*, 384 U. S. 214 (1966), Mr. Justice Douglas and Mr. Justice Brennan recently had the occasion to restate the heart of *Dombrowski* in words which offer an insight into the central question presented here:

"That result [the decision of the Court to review the case in *Mills*] follows *a fortiori* from our holdings that where First Amendment rights are jeopardized by a state prosecution which, by its very nature, threatens to deter others from exercising their First Amendment rights, a federal Court will take the extraordinary step of enjoining the state prosecution. *Dombrowski v. Pfister*, 380 U. S. 479; *Cameron v. Johnson*, 381 U. S. 741", 384 U. S. at 220.

In *Dombrowski* this understanding, that under certain circumstances the "defense of the State's criminal prosecution will not assure adequate vindication of constitutional rights", 380 U. S. at 485, proved the touchstone in resolving the complex questions of federal equity jurisdiction and abstention presented in that case. Underneath the Court's direction that where a state court proceeding "unaffected by

¹⁴ See generally, *The Dombrowski Remedy—Federal Injunctions Against State Court Proceedings Violative of Constitutional Rights*, 21 Rutgers Law Review 92 (1966); Boyer, *Federal Injunctive Relief; A Counterpoise Against the Use of State Criminal Prosecutions Designed to Deter the Exercise of Preferred Rights*, 13 How. L. Jour. 50 (1967).

the prospect of its success or failure", 380 U. S. at 487, itself creates a "chilling effect upon the exercise of First Amendment rights", 380 U. S. at 487, a federal court of equity has a duty and responsibility to act, lies a conception of the fundamental principles of comity governing the Federal Union which helps to resolve the question as to whether 2283 is a bar to injunctive relief in this case.

Shortly after this Court's decision in *Dombrowski*, Circuit Judge Wisdom had the occasion to comment upon the underlying principles of comity which led this Court to reject any concept of "federal forbearance", cf. *Baines v. Danville*, *supra*, in *Dombrowski*.

In explaining why injunctive relief would have been appropriate in the case then before the Court, *Cox v. Louisiana*, 348 F. 2d 750 (5th Cir., 1965), an epilogue to this Court's decision in *Cox v. Louisiana*, 379 U. S. 559 (1965), Judge Wisdom used words which illuminate the threshold question presented by this appeal:

The general principle, basic to American Federalism, that United States courts usually should refrain from interfering with the state courts' enforcing local laws is unassailable. But the sharp edge of the Supremacy Clause cuts across all such generalizations. When a State, under the pretext of preserving law and order uses local laws, valid on their face, to harass and punish citizens for the exercise of their constitutional rights or federally protected statutory rights, the general principle must yield to the exception: the federal system is imperiled.¹⁵

¹⁵ Judge Wisdom described the case then before the Fifth Circuit in these terms:

"The second prosecution is without any hope of success. The district attorney's transparent purpose is to harass and punish

Again, in a subsequent case arising out of the Fifth Circuit involving the propriety of Federal injunctive interference with state proceedings, Senior Judge Whitaker, sitting by designation, recently formulated the fundamental principles of federalism which justify such interference under the circumstances presented by this case:

"A court of the United States, quite properly, is loathe to interfere in the internal affairs of a State. The sovereignty of the States, within the boundaries reserved to them by the Constitution, is one of the keystones upon which our government was founded and is of vital importance to its preservation. But in Clause 2 of Article VI of the Constitution of the United States it is provided:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Hence, any State law, which is in conflict with the United States Constitution or a law enacted by Congress in pursuance thereof, cannot be enforced. Nor

the petitioner for his leadership in the civil rights movement, and to deter him and others from exercising rights of free speech and assembly in Louisiana—in this instance, by advocating integration of public accommodations.

"A civil complaint asserting such an abuse of the prosecutorial function would state a claim under the Civil Rights Act, 42 U. S. C. §1983 and justify injunctive relief. *Dombrowski v. Pfister*, 1965, 380 U. S. 479, 85 S. Ct. 1116, 14 L. Ed. 2d 22. This is not a *Douglas v. City of Jeannette*, *Stefanelli*, or *Cleary v. Bolger* situation."

can a valid State law be applied in a way to thwart the exercise of a right guaranteed by the Constitution and laws enacted by Congress in pursuance thereof.

So, where it is alleged that certain State laws do so conflict or are being utilized, not for legitimate State purposes, but as an expedient to deprive plaintiffs of the rights guaranteed them by the Constitution of the United States and the laws of Congress enacted under the authority thereof, a court of the United States must entertain the suit and, if the allegations are proven, and injunctive relief appears to be required, it must issue the injunction." *NAACP v. Thompson*, 357 F. 2d 831 (5th Cir., 1966).

It is of course no coincidence that to a large measure it is out of the decisions of the Fifth Circuit¹⁶ that the understanding has emerged which is at the heart of the restatement of federal responsibility implicit in this Court's decision in *Dombrowski*—that where state court criminal proceedings operate to "chill" the exercise of fundamental federal constitutional freedoms, the very principles of comity which underlie and draw their vitality from the Federal system require, rather restrict, the exercise of federal power to restrain such proceedings. These rules of comity which govern the relationship of the federal courts to the state courts, the "general principles" Judge Wisdom refers to in *Cox v. Louisiana*, must reflect the

¹⁶ Cf. for example: *Browder v. Gale*, 147 F. Supp. 707 (M. D. Ala.), aff'd 352 U. S. 963; *Bush v. New Orleans School Board*, 194 F. Supp. 182 (E. D. La., aff'd 367 U. S. 907); *Dombrowski v. Pfister*, 327 F. Supp. 556 (dissenting opinion of Circuit Judge Wisdom); *U. S. v. Wood*, 295 F. 2d 772 (5th Cir.). See generally, Lusk, Racial Discrimination and the Federal Law: A Problem in Nullification, 63 Columbia L. R. 1163 (1963).

nature of the political system they are designed to operate within. This is a Federal union. It is not a confederation of equal sovereign powers. The doctrines of American federalism which have emerged through struggles and conflict can only be understood in terms of the original repudiation of the political philosophy underlying the Articles of Confederation. Fundamental to the system of government which emerged after 1787 was the recognition that the alliance of independent and separate sovereign states had been replaced by a Federal Union. This new political form represented a bold experiment in government. In order to preserve the values of the independent local self-government entities which the states represented, within the framework of a unified Nation with power to survive and protect the interests of all its citizens, a fundamental allocation of responsibilities had to be made. In this distribution of power the primary responsibility for the protection and preservation of the Union itself and the system of government upon which it rests fell upon the national government.

It is within this context that the relation of Section 2283 to the relief here requested must be examined. The preservation of American federalism, the necessary objective of any rule of comity, requires that this original and fundamental division of responsibility between the national government and the states be respected. The healthy values of a federal system are no more served by a denial of national responsibility than by an intrusion into local responsibility. Upon the national government and the national courts has been placed the primary responsibility for the preservation of those aspects of government essential to the existence of the Federal Union and the protec-

tion of the fundamental liberties of the First Amendment is of this order.

Accordingly, if 2283 is indeed "an affirmation of the rules of comity," Moore, *Commentary, supra*, and "should be read in the light of those principles," *Baines v. Danville, supra*, it would seem inescapable that the only conclusion which can be drawn from the meaning of this Court's opinion in *Dombrowski* is that the "principles developed for our dual system of courts", Moore, *Commentary, supra*, do not foreclose, but in fact require federal equity intervention to restrain state court proceedings where relief is otherwise "proper in light of the criteria set forth in *Dombrowski*", *Cameron v. Johnson*, 381 U. S. 741. It is in this sense, we would suggest that, in the words of Circuit Judge Rives "the only real issue in this case" is whether "the facts as proved require the granting of the relief requested." In short, *Dombrowski* itself answers the preliminary threshold question posed in the *Cameron* remand. Relief grounded upon a complaint and record which meets "the criteria set forth in *Dombrowski*" 381 U. S. at 741, is not barred by the principles of comity embodied in the federal anti-injunction statute.¹⁷

¹⁷ In a recent opinion Circuit Judge Wisdom, concurring with a *per curiam* opinion of a three-judge statutory court, *Ware v. Nichols*, 266 F. Supp. 564 [N. D. Miss., 1967, Circuit Judges Coleman and Wisdom and District, now Circuit, Judge Clayton], holding the Mississippi sedition law unconstitutional under the principles of *Dombrowski v. Pfister*, has had the occasion to discuss the fundamental issues raised by the threshold question in the *Cameron* remand in this way:

"This case involves no federal invasion of states' rights protected by Section 2283. Instead, this case requires rightful *federal interposition* under the Supremacy Clause, to protect the individual citizen against state invasion of his constitutionally protected national rights as a citizen of the United States."

(footnote continues on next page)

2. *Prior decisions of this Court support the conclusion that an injunction which meets the criteria of Dombrowski, brought under Title 42 U. S. C. Section 1983, is an "expressly authorized" exception to Section 2283.*

The history of the interpretation by this Court of 2283 and its statutory predecessor, Section 265 of the Judicial Code of 1911 supports the conclusion that injunctive relief grounded on Title 42 U. S. C. 1983 which meets "the cri-

Judge Wisdom footnoted his conclusion with this interesting summary of the decided case law:

"2. *Baines v. City of Danville*, 4 Cir. 1964, 337 F. 2d 579, cert. denied, 381 U. S. 939, 85 S. Ct. 1772, 14 L. Ed. 2d 702 (1965) held that Section 1983 is not an exception to Section 2283. In analogous situations, however, decisional authority can be found for injunctive relief or removal. *Dilworth v. Riner*, 5 Cir. 1965, 343 F. 2d 226 authorized injunctive relief for plaintiffs charged with breach of the peace for a sit-in demonstration in a restaurant, a federally protected right. *City of Greenwood v. Peacock*, 1966, 384 U. S. 808, 86 S. Ct. 1800, 16 L. Ed. 2d 944, denied removal of certain state court prosecutions but recognized the availability of injunctive relief under some of the allegations made in the *Peacock* removal petitions. Compare *State of Georgia v. Rachel*, 1966, 384 U. S. 780, 86 S. Ct. 1783, 16 L. Ed. 2d 925, permitting removal of state prosecutions for activities now protected by Title II of the Civil Rights Act of 1964. See also *Tolg v. Grimes*, 5 Cir. 1966, 355 F. 2d 92, cert. denied 384 U. S. 988, 86 S. Ct. 1887, 16 L. Ed. 2d 1005 (1966); *NAACP v. Thompson*, 5 Cir. 1966, 357 F. 2d 831, 838; *Hillegas v. Sams*, 5 Cir. 1965, 349 F. 2d 859, 863, cert. denied 383 U. S. 928, 86 S. Ct. 927, 15 L. Ed. 2d 847 (1966); *Cooper v. Hutchinson*, 3 Cir. 1950, 184 F. 2d 119; *Tribune Review Publishing Co. v. Thomas*, W. D. Pa. 1957, 153 F. Supp. 486, 490. And see *Moore*, *Federal Practice* par. 0.213.(1) at 2416 (2d 1960); *Mintz*, *The Dombrowski Remedy—Federal Injunctions Against State Court Proceedings Violative of Constitutional Rights*, 21 Rutgers L. Rev. 92 (1966); *Boyer*, *Federal Injunctive Relief: A Counterpoise Against the Use of State Criminal Prosecutions Designed to Deter the Exercise of Preferred Constitutional Rights*, 13 How. L. Jour. 50 (1967); *Brown*, *Dombrowski v. Pfister*, 34 Fordham L. Rev. 71 (1965).

Cf. *United States v. Wood*, 5 Cir. 1961, 295 F. 2d 772 holding that 42 U. S. C. §1971 is an exception to Section 2283."

teria set forth in *Dombrowski*" 381 U. S. at 741, should be held to fall within the "expressly authorized" exception to Section 2283.¹⁸

a. The antecedents of section 2283 and the gloss placed upon the statutes by this Court

The original version of section 2283 was section 5 of the Act of March 2, 1793, 1 Stat. 335, which provided that:

... nor shall a writ of injunction be granted ... to stay proceedings in any court of a state ...

In 1874 an exception was engrafted onto this provision, and its language was slightly rephrased, so that it read (36 Stat. 1162, 28 U. S. C. §379, §265 of the Judicial Code of 1911):

The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

This language remained intact until the revision of 1948.

Notwithstanding the near-absolute language of the act, however, this Court over the years found a variety of "implied exceptions" to the sweep of its prohibition. See,

¹⁸ Section 2283 provides as follows: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." In *Dombrowski*, this Court found it "unnecessary" to resolve the generalized question as to whether suits under 42 U. S. C. 1983 come under the 'expressly authorized exception to Section 2283' and compared *Cooper v. Hutchinson*, 184 F. 2d 119, 124 (3rd Cir. 1950) with *Smith v. Village of Lansing*, 241 F. 2d 856, 859 (7th Cir. 1957)." 380 U. S. at p. 484, Footnote 2.

e.g., *Toucey v. New York Life Insurance Co.*, 314 U. S. 118 (1941); 1A *Moore's Federal Practice* ¶0.208[2], [4], pp. 2302, 2324, ¶0.209, p. 2401 *et seq.*; Hart and Wechsler, *The Federal Courts and The Federal System*, 1075-1076 (1953). One category of such "implied" exceptions, prior to the 1948 revision, was the so-called "statutory" exceptions, i.e., exceptions which appeared to be authorized by other federal statutes. See *Toucey v. New York Life Insurance Co.*, 314 U. S. 118, 132-134 (1941). Other exceptions, not grounded upon federal statutes, were also recognized. See *Toucey v. New York Life Insurance Co.*, *supra* at 134 *et seq.*¹⁹

One of the "implied exceptions" to the antecedents of Section 2283 which the Court recognized appeared in the

¹⁹ Under the antecedents of section 2283 the lower courts were divided over the question of whether section 1983 amounted to an "implied exception" to the anti-injunction act. Compare *Aultman & Taylor Co. v. Brumfield*, 102 Fed. 7 (C. C. N. D. Ohio, 1900), *appeal dismissed, with costs, on authority of counsel for appellants*, 22 S. Ct. 938, 46 L. Ed. 1265 (1902), and *Mickey v. Kansas City*, 43 F. Supp. 739 (W. D. Mo. 1942), with *Tuchman v. Welch*, 42 Fed. 548, 557-559 (C. C. D. Kan. 1890). In the *Tuchman* case, the court, after quoting what is now section 1983, said:

"Suppose the state of Missouri should enact a law prohibiting any colored citizen from exercising any right of suffrage, and provide for his arrest and criminal prosecution for voting, with the auxiliary proceeding that the proper county attorney might also apply for an injunction, and perpetually enjoin him from exercising his constitutional privilege; that, under such law, he should be arrested and enjoined; and, after he had been discharged from arrest by the writ of *habeas corpus*, the said officers should threaten to proceed against him as for contempt, under such injunction, for renewing the effort. Would it be questioned that the United States court could entertain a bill in equity under the act of 1871 [i.e., section 1983] to restrain such order . . ."

This opinion is criticized in the *Aultman* case, *supra*. But that case took a very strict view of the scope of the anti-injunction statute, a view apparently not in accord with the developing doctrine of "implied exceptions."

Emergency Price Control Act of 1942, 56 Stat. 23. Section 205(a) of this Act (56 Stat. at 33) provided that:

Whenever in the judgment of the administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision

In short, the Price Administrator was given general injunctive powers to enforce the Act. In *Porter v. Dicken*, 328 U. S. 252 (1946), a state court had issued a writ of possession to evict a tenant, and the Administrator sued in federal court for an injunction to restrain the eviction. The district court first issued a temporary restraining order, but later dismissed the complaint "on the ground that §265 of the Judicial Code, 28 U. S. C. 379, deprived the Federal District Court of jurisdiction to stay the proceedings in the state court." 328 U. S. at 253. This Court held (*id.* at 254-255):

The District Court erred in holding that the policy of §265 should not be considered impaired by the Emergency Price Control Act . . . §205 of the Price Control Act which authorizes the Price Administrator to seek injunctive relief in appropriate courts, including federal district courts, is an implied legislative amendment to §265, creating an exception to its broad prohibition. *This is true because §205 authorizes the Price Administrator to bring injunction proceedings to enforce that Act in either state or federal courts, and this authority is broad enough to justify an in-*

junction to restrain state court evictions. But if §265 controls, as the District Court held, the Administrator here could not proceed in the federal court, since there is a proceeding pending in a state court. Since the provisions of the Price Control Act, enacted long after §265, do not compel the Administrator to go into the State courts but leave him free to seek relief in the federal courts, he was not barred by §265 from seeking an injunction to restrain an unlawful eviction (emphasis added).

Porter v. Dicken, thus, held that a federal statute creating a federal cause of action for an injunction, although not referring specifically to injunctions against state court proceedings, was sufficiently broad to authorize injunctions against state court proceedings, and was for that reason excepted from the prohibition of the anti-injunction statute. This rationale would, it seems, apply directly to suits for injunctions brought under Section 1983 against pending state court proceedings where the criteria for injunctive relief set forth in *Dombrowski* are present. Section 1983, like Section 205(a) of the Price Control Act, authorizes injunctive relief, without referring in terms of injunctions against state court proceedings. Under the rationale of *Porter v. Dicken* it would seem that "this authority is broad enough to justify an injunction to restrain state court" proceedings.

- b. The statutory revision in 1948 does not undermine the rationale of *Porter v. Dicken*.

The statutory revision in 1948 utilizing the words "expressly authorized by Act of Congress" does not undermine the rationale of *Porter*. See *Hart & Wechsler, op. cit.*

at 1076. "Expressly authorized" does not require reference in specific terms to Section 2283. *Amalgamated Clothing Workers v. Richman Bros. Co.*, 348 U. S. 511, 516 (1955). Nor would it seem to mean that specific words of authorization to restrain state court proceedings must be included in the statutory grant of equitable power. Otherwise almost all of the earlier recognized statutory exceptions would have been repealed by the 1948 codification. But the Revisor's Notes state that the revision was designed to "restate" and reestablish the existing law as to "exceptions" prior to *Toucey*.²⁰ See *Hart & Wechsler, op. cit.* at 1077. The 1948 codification would seem therefore to reaffirm the reasoning of *Porter* that the equitable grant of power in a statute like the Civil Rights Act falls with the exceptions of 2283.

This question was considered by this Court in 1955 but not resolved in *Amalgamated Clothing Workers, supra*. The Court did not reach the question as to whether a statute which in general terms authorizes injunctive relief can be a statute "expressly" authorizing injunctions against

²⁰ The "substance" of the Revisor's notes are quoted in *Hart & Wechsler, op. cit.* at 1075, as follows:

An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.

The phrase "in aid of its jurisdiction" was added to conform to section 1551 of this title and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.

The exceptions specifically include the words "to protect or effectuate its judgments," for lack of which the Supreme Court held that the Federal Courts are without power to enjoin re-litigation of cases and controversies fully adjudicated by such courts. (See *Toucey v. New York Life Insurance Co.*, . . .).

Therefore the revised section restores the basic law as generally understood and interpreted prior to the *Toucey* decision. Changes were made in phraseology.

state courts within the meaning of Section 2283. Since the *Amalgamated* decision turned on the fact that the grant of equitable relief in the statute there involved was only to the National Labor Relations Board or its officers and not to the petitioner-union, unlike Section 1983 of the Civil Rights Act which permits "any person" to seek the equitable relief authorized, the Court did not reach the question now squarely posed in this appeal.

The interpretative approach developed over the years in analyzing Section 2283 and its predecessor statute would seem to lend considerable support to the conclusion reached by Circuit Judge Rives in his dissenting opinion below that:

"The principles rationally extrapolated from the cases creating express exceptions to the prohibition of section 2283 derive content from the concrete situations which gave rise to them. Where a specific, limited and clearly delineated substantive right has been conferred by Congress the courts have found an express exception to section 2283. The express exception is the necessary concomitant of the need to vindicate federally created rights and is entirely consistent with the history of section 2283". (App. 63).

In the deepest sense, therefore, the concept underlying the cases defining the "exception" doctrine reflects again the comity principles governing the dual systems. Where it is necessary to exercise federal power to "vindicate" federal rights, the Courts have found an "exception" to the anti-injunction statute.²¹ In this spirit, where, as here,

²¹ For example, the federal courts in the Fifth Circuit have previously recognized this exception to §2283 based on a "specific lim-

the "need to vindicate" most "precious" federal rights is involved, cf. *Dombrowski v. Pfister*, *supra* at 486, a holding that injunctive relief based upon 42 U. S. C. 1983 which meets the criteria of *Dombrowski*, is an "express exception" to Section 2283, is in Judge Rives' words, "entirely consistent with the history of section 2283" (App. 63).

3. Injunctive relief against state proceedings which meet the criteria of *Dombrowski* was one of the "statutory purposes sought to be achieved" by the legislative enactors of Section 1983

A powerful consideration reenforcing the conclusion that 2283 does not bar the injunctive relief here sought flows from an examination of the Reconstruction legislation which grounds the invocation of federal equity power in this case.

In a recent decision holding that an injunction brought pursuant to a provision of the 1964 Civil Rights Act, Section 203(a)-(c), is an exception to the 2283 bar, the Fifth Circuit pointed out that perhaps the soundest guiding principle for determining "express authorization" within the meaning of 2283 is consideration of "the statutory purpose

ited and clearly delineated substantive right . . . conferred by Congress." In *United States v. Wood*, 295 F. 2d 772 (5 Cir. 1961) the government sought injunctive relief pursuant to 42 U. S. C. §1971 against a state criminal proceeding. The Fifth Circuit granted that relief noting that it was appropriate where state court proceedings are used as "instruments for the deprivation of constitutional rights." 295 F. 2d at 781. And in *Dilworth v. Riner*, 343 F. 2d 226 (5 Cir. 1965) it was held that §203(a)-(c) of the 1964 Civil Rights Act was also an exception to the 2283 bar.

sought to be achieved" by the congressional enactment. *Dilworth v. Riner*, 343 F. 2d 226 (5 Cir. 1965).²²

Applying this test to the statutory provision for equitable relief here involved, Section 1983 of Title 42 of the United States Code²³ the conclusion is inescapable that the "statutory purpose sought to be achieved" by the congressional enactors involved precisely the type of assertion of national power found in the invocation of federal injunctive power against state court proceedings which harass and intimidate citizens in the exercise of their fundamental rights.

²² In arguing that 1983 adequately authorizes a federal court to enjoin a state court proceeding Professor Moore suggests a similar inquiry:

"In a suit to redress private rights, how definite must the statutory authorization be to bring the case within the first exception to §2283? The Civil Rights Act provision for a "suit in equity" to redress the deprivation of rights has been held to authorize a federal court to enjoin state court proceedings [citing *Cooper* and *Tribune*]. On the other hand provision in the anti-trust acts for injunctive relief in a private suit, is not an authorization for the federal court to enjoin a state court from proceeding with a suit over which it has jurisdiction, even though some of the matters to be there adjudged are within the compass of the federal action. *The differentiating factor is the underlying purpose of the statutory provision for equitable or injunctive relief.* (Emphasis added.)

²³ Section 1983 of Title 42 of the United States Code reads as follows:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Section 1983 is derived, almost without change, from Section One of the 1871 "Act to Enforce the Fourteenth Amendment".²⁴ As Mr. Justice Fortas has recently stated for the Court, "The purpose and scope of the 1866 and 1870 enactments must be viewed against the events and passions of the time" *United States v. Price*, 383 U. S. 787, 803. Any examination of the legislative debates surrounding the enactment of these measures reveals the accuracy of a recent historical conclusion that "in 1870, measures to preserve the Negro's constitutional rights were desperately needed, and Congress responded with the passage of the Enforcement Acts of 1870 and 1871" Swinney, *Enforcing the Fifteenth Amendment, 1870-1877*, 28 Journal of Southern History 202, 218 (1962). Section 1983 was one of the principal remedies forged in the intensity of congressional determination to assert the supremacy of national power in the protection of the fundamental rights of the race of newly freedmen. *Monroe v. Pape*, 365 U. S. 167.²⁵ The Reconstruction majorities were determined to

²⁴ Act of April 20, 1871, ch. 22, §1, 17 Stat. 13.

²⁵ See, for example, the discussion of the significance of the panoply of Reconstruction remedial legislation by then Circuit Judge, now Mr. Justice Marshall, in his dissenting opinion in *People v. Giamison*, 342 F. 2d 255, 275, 283 (2d Cir., 1964):

"The legislators of the Reconstruction Era saw the federal courts as a necessary and perhaps the most appropriate forum for the protection of federal rights. This conception was expressed in, for example, the Act of April 9, 1866, 14 Stat. 27, §3 of which was the first step toward the present §1443; the Act of February 5, 1867, 14 Stat. 385, the habeas corpus statute (now 28 U. S. C. §2241(c)(3)) providing a federal forum to try a state prisoner's claim that he is being deprived of liberty in violation of the Constitution, see *Fay v. Noia*, 273 U. S. 391, 83 S. Ct. 822, 9 L. Ed. 2d 837 (1963); the Act of April 20, 1871, 17 Stat. 13, the antecedent to §§1983 and 1985 giving the federal courts original jurisdiction to remedy, either in a civil

go, as a recent commentator has put it, "to the limits of Constitutional power", Note, 21 Rutgers L. R., *supra*, at 109, to create effective national instrumentalities of power to protect the fundamental constitutional rights guaranteed to the new citizens. The sponsor of the legislation, Representative Shellabarger of Ohio placed the question of the overriding nature of "the federal role in the establishment and vindication of fundamental rights", cf. *United States v. Price*, 383 U. S. at 806, 807, in sharp and direct words.

"[T]o say that Congress can do no such thing as make any law so enforcing these rights, nor open the United States courts to enforce any such laws, but must leave all protection and law-making to the very states which are denying the protection, is plainly and grossly absurd. . . .

.....

If, after all this transcendent profusion of enactment in restraint of the States and affirmative conferment of power on Congress, the States shall remain unrestrained, the complete, sole arbiters of power, to defend or deny national citizenship—to make laws abridging or not abridging, to protect or to destroy . . . these United States citizens as the State may please, and the United States must stand by a powerless spectator of the overthrow of the rights and liberties of its citizens, then not only is the profusion of guards put by the Fourteenth Amendment around our rights a miserable waste of words, but the Government is it-

or criminal action, claimed violations of federal constitutional rights, see *Monroe v. Pape*, 365 U. S. 167, 81 S. Ct. 473, 54 Ed. 2d 492 (1961).

self a miserable sham, its citizenship a curse, and the Union not fit to be."²⁶

The Republican majority which enacted the Shellabarger proposal into law emphasized over and over again their conception that this new weapon of federal enforcement they were creating, the 1983 cause of action for relief, cf. *Dombrowski v. Pfister, supra*, at 490, was designed to effectuate federal supremacy over *any* state proceedings which interfered with fundamental rights.²⁷

²⁶ Cong. Globe, 42d Cong., 1st Sess. App. 68, 69 (1871).

²⁷ See for example these comments in the debates:

"We Republicans mean to go on until we shall give full force and effect to every provision of the American Constitution. . . .

Sir, a Government that cannot protect the humblest man within its limits, that cannot snatch from oppression the feeblest woman or child, is not a Government. It is wanting in the vital attribute of government. The power to protect its people inheres indestructibly in all Governments, and that frame of constitution or laws which does not provide for it fails to establish government. *Id.* at 339.

To argue thus [that the United States cannot intervene to protect basic rights] is to violate every sound principle of legal and logical interpretation, and to suppose a great wrong without a remedy in our political system. *Id.* at 389.

Am I to abandon the attempt to secure to the American citizen these rights, given to him by the Constitution . . . or, sir, am I to resort to the last extreme remedy of the Constitution? . . .

I conclude . . . by saying that in my opinion Congress has power to legislate for the protection of every American citizen in the full, free, and undisturbed enjoyment of every right, privilege, or immunity secured to him by the Constitution, and that this may be done—

First. By giving him a civil remedy in the United States courts for any damage sustained in that regard. *Id.* at 477.

If such things can be without a remedy applied if need be by the national arm, then are we little more than a bundle of sticks, but not a nation. Believing that we are a nation, I cannot doubt the power and the duty of the national Government."

But with even greater relevance to the present issue before the Court, the legislative debates reveal an intense concern that this new remedy for asserting federal primacy in the protection of fundamental rights be available to meet the ever present problem of the deprivation of rights accomplished in whole or part through the abuse and perversion of state court machinery in the southern states.²⁸

That this was one of the "statutory purposes" of Section 1983 stands out clearly in the exhaustive legislative history of the provision analyzed carefully in both the majority

²⁸ See, for example, these comments in the debates:
 Cong. Globe, 42d Cong., 1st Sess. App. 78 (1871).

If the jurors of South Carolina constantly and as a rule refuse to do justice between man and man where the rights of a particular class of its citizens are concerned, and that State affords by its legislation no remedy, that is as much as denial to that class of citizens of the equal protection of laws as if the State itself put on its statute-book a statute enacting that no verdict should be rendered in the courts of that State in favor of this class of citizens. *Id.* at 334.

If the State Legislature pass a law discriminating against any portion of its citizens . . . it will be admitted that the State does not afford the equal protection. But if the statutes show no discrimination, yet in its judicial tribunals one class is unable to secure that enforcement of their rights and punishment for their infraction which is accorded to another . . . the State has not accorded to all its citizens the equal protection of the laws. *Ibid.*

Plausibly and sophistically it is said the laws of North Carolina do not discriminate against them; that the provisions in favor of the rights and liberties are general; that the courts are open to all; that juries, grand and petit are commanded to hear and redress without distinction as to color, race, or political sentiment.

But it is a fact, asserted in the report, that of the hundreds of outrages committed upon loyal people through the agency of this Ku Klux organization not one has been punished. This defect in the administration of the laws does not extend to other cases. Vigorously enough are the laws enforced against Union people. They only fail in efficiency when a man of known Union sentiments, white or black, invokes their aid. Then Justice closes the door of his temples.

and dissenting opinions in *Monroe v. Pape*, 365 U. S. 167. In Mr. Justice Douglas' majority opinion for the Court one question emerges time and again in his discussion of the history of the provision. Central among the concerns of the Reconstruction Congress which enacted the statute were the deprivations of rights of citizens which occurred in the course of court proceedings. The misuse of state court proceedings, and in particular criminal proceedings, was at the very heart of the breakdown in constitutional protection which the Ku-Klux Klan Act [the statutory predecessor of 1983] was designed to provide federal remedies to meet. Over and over again in setting forth the legislative history of the statute the Court's opinion emphasized that the misuse of the judicial proceedings in the former slave holding states occupied the principal concern of the enactors. See, for example, 365 U. S. 174, n. 10, 178, 179.²⁹

²⁹ Mr. Justice Douglas in his recent dissenting opinion in *Pierson v. Ray*, — U. S. —, 87 S. Ct. 1213 (1967) gave additional evidences of the legislative purpose to meet problems posed by misuse of the state judicial machinery. Thus he wrote:

The congressional purpose seems to me to be clear. A condition of lawlessness existed in certain of the States, under which people were being denied their civil rights. Congress intended to provide a remedy for the wrongs being perpetrated. And its members were not unaware that certain members of the judiciary were implicated in the state of affairs which the statute was intended to rectify. It was often noted that "immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress." Cong. Globe, 42d Cong., 1st Session, 374. Mr. Rainey of South Carolina noted that "The Courts are in many instances under the control of those who are wholly inimical to the impartial administration of justice". *Id.*, at 394. Congressman Beatty claimed that it was the duty of Congress to listen to the appeals of those who "by reason of popular sentiment or secret organizations or prejudiced juries or bribed judges (cannot) obtain the rights and privileges due an American citizen. * * *" *Id.*, at 429. The members supporting the proposed measure were apprehensive that there had been a complete breakdown in the

The dissenting opinion of Mr. Justice Frankfurter likewise highlights the congressional concern with violations of constitutional rights committed through the misuse of state judicial proceedings.³⁰ As Justice Frankfurter points out the earlier Act upon which Section 1 of the 1870 Act was based (the predecessor to 1983) "had as its primary objective the effective nullification of the Black Codes, those statutes of the Southern legislatures which had so burdened and disqualified the Negro so as to make his emancipation illusory." 365 U. S. at 225. The main thrust of the Black Codes was the utilization of a wholly discriminatory system of criminal laws and criminal proceedings designed to restore the freedman to his ante-bellum status.³¹ It is understandable therefore that there should have been deep Congressional concern with the misuse of state court proceedings as "instruments for the deprivation of constitutional rights." Cf. *United States v. Wood*, *supra*.³²

There may be many complicated questions as to the scope and breadth of the concept of "color of law" in the

administration of justice in certain States and that laws nondiscriminatory on their face were being applied in a discriminatory manner, that the newly won civil rights of the Negro were being ignored, and that the Constitution was being defied. It was against this background that the section was passed, and it is against this background that it should be interpreted.

³⁰ It should be borne in mind that the difference between the majority and the dissent in *Monroe* had nothing to do with whether "color of law" in the statute included judicial proceedings. Both opinions assume this. The difference lies in the further sweep of the "color of law" concept beyond formal organs of law.

³¹ See for example 1 Fleming, *Documentary History of Reconstruction*, 273-311; 2 Commager, *Documents of American History*, 2.7; Randall, *The Civil War and Reconstruction*, all cited in Justice Frankfurter's opinion in *Monroe v. Pape* at 225, Fn. 35.

³² It seems clear that §1983 was designed to provide a civil remedy for violation of fundamental rights occurring during the course

Reconstruction legislation. Cf. *Williams v. United States*, 341 U. S. 97; *Screws v. United States*, *infra*; *United States*

of state criminal trials. The criminal equivalent of §1983 is now 18 U. S. C. 242. Under this statute prosecutions may be brought for deprivations of civil rights occurring in connection with state trials, like trumped-up proceedings. E.g., *Culp v. United States*, 131 F. 2d 93 (C. A. 8, 1942); *Brown v. United States*, 204 F. 2d 247 (C. A. 6, 1953); *Screws v. United States*, 325 U. S. 91, 126 (1945) (Rutledge, J., concurring). This was clearly intended by Congress. See *Monroe v. Pape*, *supra*. And it is perfectly clear that §1983, enacted in 1871, was intended to reach the same conduct which is punishable under 18 U. S. C. 242.

Thus, Congressman Shellabarger, Chairman of the House Select Committee which drafted the Act of April 20, 1871, now §1983, said that (as described in Flack, *The Adoption of the Fourteenth Amendment*, at p. 228 (1908)):

[T]he first section of the proposed bill [the Act of 1871] was modeled upon the second section of the Civil Rights Bill of 1866, the only difference being that this one provided for civil remedy where the bill of 1866 provided for criminal proceeding. . . . (Emphasis added.)

Similarly, in *Monroe v. Pape*, *supra*, Mr. Justice Frankfurter, dissenting, said (365 U. S. at 212-213, n. 18):

Mr. Shellabarger, Chairman of the House Select Committee which authored the Act of April 20, 1871, whose first section is now 1979 [of the Revised Statutes, now section 1983 of Title 42] reported to the House that that section was modeled upon the second section of the Act of April 9, 1866, 14 Stat. 27, and that the two sections were intended to cover the same cases, with qualifications not relevant here. Cong. Globe, 42d Cong., 1st Sess., App. 68. See also *id.*, at 461. The 1866 provision had been re-enacted, substantially and in form, by the seventeenth and eighteenth sections of the Act of May 31, 1870, 16 Stat. 140, 144 and the 1874 revision of the provision was in turn patterned on the present §1979. See *Screws v. United States*, 325 U. S. 91, 99-100. The sections have consistently been read as coextensive in their reach of acts "under color" of state authority. (Emphasis added.)

In short, since the criminal provisions dating from the Act of 1866 were clearly designed to reach deprivations of rights occurring in state courts, and since §1983 is the civil equivalent of the criminal provisions, a strong reason exists for thinking that Congress intended the civil remedy to reach as far as injunctions against state court proceedings.

v. *Classic*, 313 U. S. 299; and *United States v. Price*, *supra*. But there is little debate as to whether "color of law" includes "color" of judicial proceedings or judicial officers. Cf. *Ex Parte Virginia*, 100 U. S. 339. Mr. Justice Frankfurter, for example, points out that in outlining his understanding of the statute involved President Johnson in his veto message described the statute in this fashion:

"It means a deprivation of the right itself, *either by the State judiciary* or the State Legislature." Emphasis added. Cong. Globe, 39th Cong. 1st Sess. 1680, cited in 365 U. S. at 226.

The objections to the legislation were phrased in terms of criticizing the federal law as penalizing "state judges" acting under color of state laws. Cong. Globe 42 Cong. 1st Sess., 365. The evils which the statute are directed against include situations when in a State's "judicial tribunals one class is unable to secure that enforcement of their rights and punishment for their infraction which is accorded to another," Cong. Globe, 42 Cong. 1st Sess. App. 315, or where "the courts of the . . . States fail and refuse to do their duty in the punishment of offenders against the law" *id.* at App. 179, or in which "a class of officers charged under the laws with their administration . . . refuse to extend [their] protection" *id.* at 334.

The majority opinion of Mr. Justice Douglas and the dissenting opinion of Mr. Justice Frankfurter in *Monroe* are filled with instances of this deep legislative concern. The exhaustive legislative history analysis in both *Monroe* opinions thus proves beyond any possible question that one of the central objectives of the enacting Congress was to provide remedies for the widespread misuse of state

judicial proceedings which resulted "in the deprivation of constitutional rights". Cf. *United States v. Wood*, *supra*.³³

On the basis of this examination of the "statutory purpose" underlying the enactment of 1983 we would suggest that, as the Court has said recently in an analogous situation in revitalizing the criminal remedies fashioned in the Reconstruction Period, "it would be strange, indeed, were this Court to revert to a construction of the Fourteenth Amendment which would once again narrow its historical purpose—which remains vital and pertinent to today's problems." *United States v. Price*, 383 U. S. 787. Section 1983 was designed as a principal remedy in the struggle for federal primacy in the protection of the new national rights of freedom and equality for the race of freedmen.³⁴ As the United States said in its Brief *Amicus Curiae* submitted in the *Baines* case in the Fourth Circuit in support of Appellants' position:

"... §1983 was one of the weapons forged in the Reconstruction Era to vindicate the Fourteenth Amendment. It should be construed in light of this broad remedial purpose. And, in this view, the federal courts, it might be thought, ought to be able to consider the equitable

³³ Cf. for example Professor Amsterdam's description of the previous debates of the 39th Congress of 1866:

It is impossible to read [the debates] . . . without concluding that the federal legislators were intensely aware of the hostility and anti-union prejudice of the Southern state courts and of the use of state courts proceedings to harass those whom the Union had an obligation to protect. Amsterdam, *Criminal Prosecutions Affecting Federally Guaranteed Civil Rights*, 113 U. Pa. L. Rev. 793 (1965).

³⁴ See generally, Kindy, *The Constitutional Right of Negro Freedom*, 21 Rutgers Law Review 387 (1967).

merits of a claim under §1983 and to grant the relief sought if it appears warranted under general equitable principles. If §2283 applies, they will apparently be unable to do so.”³⁵

A decision so interpreting the thrust of Section 1983 in accordance with the original intentions of the enactors would reflect the true sense of the principles of comity embodied in 2283 for as this Court has so recently said in *United States v. Price*, “Today, a decision interpreting a federal law in accordance with its historical design, to punish denials by state action of constitutional rights of the person can hardly be regarded as adversely affecting ‘the wise adjustment between State responsibility and national control’” 383 U. S. at 806, 807.

In the spirit of this Court’s words in *Price*, we suggest that “today” a decision interpreting Section 1983 as authorizing a federal injunction against a state court proceeding which “unaffected by the prospect of its success or failure” has a “chilling effect upon the exercise” of fundamental rights, *Dombrowski v. Pfister* at 487, would interpret the statute “in accordance with its historical design”, a design which “remains vital and pertinent to today’s problems.” *United States v. Price, supra*.

³⁵ The Department of Justice filed a Memorandum for the United States as *Amicus Curiae* in *Chase v. Aiken*, #9084, and *Chase v. McCain*, #9081, September, 1966, on appeal from the Western District of Virginia District Court to the Court of Appeals for the Fourth Circuit, in which the government discussed the question of whether §1983 was an exception to the §2283 bar. See *Baines v. Danville, supra*.

4. *This Court's recent opinion in City of Greenwood v. Peacock indicates that 2283 does not bar injunctive relief in this case*

Subsequent to the remand in this case, 381 U. S. 745 (1965), this Court has in effect already spoken to the question as to whether "28 U. S. C. Sect. 2283 bars a federal injunction in this case", 381 U. S. 745, *supra*. In denying the remedy of removal under the civil rights removal statute, 28 U. S. C. 1443, which was sought to be invoked in *City of Greenwood v. Peacock*, 384 U. S. 808 (1966), Mr. Justice Stewart wrote for the Court:

"But there are many other remedies available in the federal court to redress the wrongs claimed by the individual petitioners in the extraordinary circumstances they allege in their removal petitions. *If the state prosecution or trial on the charge of obstructing a public street or on any other charge would itself clearly deny their rights protected by the First Amendment, they may under some circumstances obtain an injunction in the federal court. See Dombrowski v. Pfister*, 380 U. S. 479, 85 S. Ct. 1116, 14 L. Ed. 2d 22." 384 U. S. at 829. (Emphasis supplied.)

This opinion, written after the *Cameron* remand, would seem to answer conclusively the threshold question posed in that remand. If a *Dombrowski* injunction is a "remedy available in the federal courts to redress the wrongs claimed" by the petitioners in *Peacock*, 384 U. S. at 829, then clearly 2283 is no bar to a *Dombrowski* injunction against a pending state court "prosecution or trial", 384 U. S. at 829. This must follow since the "wrongs claimed" by the *Peacock* petitioners involved contentions concerning

the pending trials. And in *Peacock*, the federal removal proceedings, for which a *Dombrowski* injunction is suggested by the Court as a possible alternative remedy, were of necessity, commenced *after* the institution of the state prosecutions.

The analysis of the pending state proceedings developed in the dissenting opinion of Mr. Justice Douglas, joined in by the Chief Justice, Mr. Justice Brennan, and Mr. Justice Fortas, emphasizes the inevitable inference that the entire Court, both in the majority and dissenting opinions, joined in suggesting that the "wrongs claimed by" the petitioners involving the state court trials were minimally subject to federal injunctive power, if the criteria of *Dombrowski* were met. Thus the dissenting Justices analyzed the claims set up in the *Peacock* removal petitions in this manner:

"Continuance of an illegal local prosecution, like the initiation of a new one, can have a chilling effect on a federal guarantee of civil rights. We said in *NAACP v. Button*, 371 U. S. 415, 433, respecting some of these federal rights, that '[t]he threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.' In a First Amendment context, we said:

'By permitting determination of the invalidity of these statutes without regard to the permissibility of some regulation on the facts of particular cases, we have, in effect, avoided making vindication of freedom of expression await the outcome of protracted litigation. Moreover, we have not thought that the improbability of successful prosecution makes the case different. The chilling effect upon the exercise of First Amendments rights may derive from the fact of the

prosecution, unaffected by the prospects of its success or failure.' *Dombrowski v. Pfister*, 380 U. S. 479, 487. The latter case was a suit to enjoin a state prosecution. *The present cases are close kin.* For removal, if allowed, is equivalent to a plea in bar granted by a federal court to protect a federal right." At p. 846.

The significant area of difference in analysis between the dissenting opinion and the majority opinion on this question was thus whether the remedy of *removal* was available. There was no disagreement as to whether *Dombrowski* would authorize a federal injunction against the pending state proceedings, if the *criteria* for injunctive relief set forth in that opinion were met. Both Mr. Justice Stewart's opinion for the Court, and Mr. Justice Douglas' opinion for the dissenting four Justices assume the availability of a *Dombrowski* injunction to meet the problems presented by the *Peacock* petitioners' contentions concerning the pending state court proceedings.³⁶

³⁶ In *Peacock*, the majority of the Court seemed concerned with the practical "result", 384 U. S. at 832, of holding that the removal remedy was available under the circumstances of that case. Apart from the propriety of such considerations, *cf.* the dissenting opinion, 384 U. S. at 853 and *Tennessee v. Davis*, 100 U. S. 257, 271, 272, it is of course clear that the *Dombrowski* injunctive remedy, presents none of the "practical" problems which concerned the majority of the Court in *Peacock*. It is an equitable remedy addressed to the sound discretion of the federal court and unlike the removal remedy does not involve a preliminary automatic loss of state court jurisdiction which results from the mere act of complying with the procedural requirement of the removal statute. *Cf.* for example, *Allman v. Hanley*, 320 F. 2d 559 (5th Cir., 1962); *Arkansas v. Howard*, 218 F. Supp. 626 (D. C. Ark., 1963); *Hopson v. North American Insurance Co.*, 71 Idaho 461, 233 P. 2d 799; *State ex rel. Allis Chalmers Manufacturing Co. v. Boone Circuit Court*, 227 Ind. 327, 86 N. E. 2d 74; *Brown v. Wechsler et al.*, 185 F. Supp. 622 (D. C. 1953); *Low v. Jacobs*, 243 F. 2d 432 (5th Cir., 1957); *Dienstig v. St. Paul Fire and Marine Insurance*

This recognition of the premise implicit in *Peacock* emphasizes the gravity of the situation were the Court now to hold that 2283 bars a *Dombrowski* injunction against a pending state court proceeding. Civil rights removal, the 1983 remedy, and federal habeas corpus were the principal weapons of federal power created by the Reconstruction Congresses to protect the newly granted constitutional rights of the race of freedmen. See generally Amsterdam, *Criminal Prosecutions Affecting Federally Guaranteed Rights*, 113 U. Pa. L. Rev., 793. By a narrow five to four vote this Court has recently declined to reactivate on any significant level the civil rights removal remedy. *City of Greenwood v. Peacock*, *supra*. If the Court were to now reconsider the premise which underlies the *Peacock* majority opinion and hold that the 1983 injunctive remedy is equally unavailable to protect citizens who face the precise problems for which the Reconstruction legislation was designed, cf. *United States v. Price*, *supra*, to a large measure "the federal role in the establishment and vindication of fundamental rights", *United States v. Price*, at p. 806, will be abandoned. This would be a fateful decision for the Court and for the country.

In *Price* the Court took the occasion to remind the nation that this federal role is "today . . . pervasive" and "intense", 383 U. S. at 806. It may be helpful to consider the significance of this "federal role", which the Reconstruction legislation was designed to implement, within the context of "today's problems", *United States v. Price*, at 806. A system of law must provide remedies to vindicate

Co., 164 F. Supp. 603 (S. D. N. Y., 1957); *Shenandoah Chamber of Progress v. Frank Associates, Inc.*, 95 F. Supp. 719 (E. D. Pa., 1950); see generally, 25 A. L. R. 2d 1045.

rights or its fundamental premises fail, *Marbury v. Madison*, 1 Crouch 137 (1803). Where, increasingly states not yet committed to the full implications of the national promises of freedom and equality to the Negro embodied in the Wartime Amendments, have turned from overt forms of resistance—nullification, interposition, massive resistance, to the more sophisticated reliance upon the utilization of state criminal machinery to harass and intimidate citizens, black and white, who seek to implement the constitutional right of freedom, see for example the illuminating opinion of Circuit Judge Wisdom in *Cox v. Louisiana*, *supra*, the primacy of the “federal role” remains crucial and legal remedies must be available for the vindication of these rights.³⁷ A decision “today . . . interpreting” Section 1983 “in accordance with its historical design”, cf. *United States v. Price*, *supra*, and reaffirming the promise implicit in *Peacock* that at a minimum a *Dombrowski* injunction invoking the authority created in the 1871 statute remains available as a remedy against state prosecutions which interfere with fundamental rights, see *City of Greenwood v. Peacock*, 384 U. S. at 829, would reinforce the role

³⁷ See Boyer, *Federal Injunctive Relief, a Counterpoise Against the Use of State Criminal Prosecutions Designed to Deter the Exercise of Preferred Rights*, *supra*, at p. 58:

“The increasing use of state criminal statutes and proceedings as a device to harass and deter the exercise of fundamental constitutional rights in efforts to obtain equality for Negro citizens requires a vigorous affirmation of the existence of federal equity to protect fundamental federally created rights. Federal courts in the South would have to close their eyes to existing realities not to notice that many of the cases in the state courts are the direct consequence of racial conflict.”

See also United States Commission on Civil Rights, Law Enforcement, a Report on Equal Protection in the South (1965); and Lusky, *Racial Discrimination and the Federal Law; a Problem in Nullification*, 63 Columbia L. R. 1163 (1963).

of "the independent federal judiciary" as "guardians" of the basic liberties of the people. *Chapman v. State of California*, *supra*, at p. 826.

On the other hand, the emasculation and virtual elimination of the 1983 injunctive remedy where the criteria of *Dombrowski* are met would not only fly in the face of this Court's promise in *Peacock*. It would say to the nation, and in particular to the descendants of the race of freedmen, that once again the solemn commitments of primary national responsibility for the fulfillment of the now one hundred year old promises of the Wartime Amendments are in danger of being eroded and eventually abandoned. Neither the "historical design" of the postwar legislation nor its critical importance in light of "today's problems", *United States v. Price*, *supra*, should permit such a conclusion.³⁸

³⁸ See for example Boyer, *supra* at p. 60:

"If the federal courts fail to act under such circumstances, this would, in effect, eliminate any effective judicial forum for the prompt and decisive protection of these rights. With the ever-increasing demand of Negro citizens for equality and freedom from legal tyranny, the elimination of an effective forum would create a constitutional crisis of grave dimensions. The absence of any tribunal of original jurisdiction prepared to enforce constitutional rights would threaten the fundamental assumption underlying the national commitment to a theory of government which encourages and permits social progress and change to take place within the channels of peaceful democratic expression."

POINT II

Equitable relief is proper in light of the criteria set forth in *Dombrowski v. Pfister*.

1. *The Dombrowski criteria*

In *Dombrowski* this Court took jurisdiction "to settle important questions concerning federal injunctions against state criminal prosecutions threatening constitutionally protected expression". 380 U. S. 479, 483. In reversing the dismissal of the complaint by a three-judge statutory court in the Eastern District of Louisiana, Circuit Judge Wisdom dissenting, 227 F. Supp. 556, 564, and in directing the issuance of federal injunctive relief against the enforcement of certain provisions of a Louisiana state criminal statute, this Court established criteria which now govern the appropriateness of the exercise of federal equity power where state criminal statutes and proceedings intrude upon the area of constitutionally protected expression.

Mr. Justice Brennan's opinion for the Court carefully analyzes two related questions involved in determining the propriety of federal relief: One, the allegations necessary to invoke federal *equity* jurisdiction, and two, the relevance of the doctrine of abstention from decision prior to adjudication by the highest state courts. In isolating the "criteria set forth" in *Dombrowski* it will be helpful to discuss these two questions, as the Court does, separately.

Dombrowski sets forth two separate and distinct categories of circumstances in which the exercise of federal equity power to restrain state criminal proceedings is appropriate. The first branch of the *Dombrowski* analysis relates to situations in which state statutes are challenged

on their face "as overly broad and vague regulations of expression." 380 U. S. at 490. Where prosecutions under such a statute are actually threatened, this challenge "if not clearly frivolous", the Court holds, "will establish the threat of irreparable injury required by the traditional doctrines of equity". 380 U. S. at 490. This is because of the "danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application" *NAACP v. Button*, at p. 433", 380 U. S. at 487. Such a statute with an overbroad sweep in this sensitive area has a "chilling effect upon the exercise of First Amendment rights", a "chilling effect", which as Mr. Justice Brennan pointed out for the Court "may derive from the fact of prosecution, unaffected by the prospects of its success or failure". Under the first branch of the *Dombrowski* analysis the criteria controlling the exercise of federal equity power are thus two-fold: (1) a facial challenge, "not clearly frivolous" to the overbreadth or vagueness of a state criminal statute in the area of free expression,³⁹ and (2) "actually threatened"

³⁹ The applicability of the *Dombrowski* concept to a statute overly broad in the area of the First Amendment, was only recently reaffirmed by this Court in *Keyishian v. Board of Regents*, 385 U. S. 589 (1967). See the discussion of Mr. Justice Brennan for the Court at p. 687:

Thus §105(1)(c) and §3022(2) suffer from impermissible "overbreadth." *Elfbrandt v. Russell*, supra, 384 U. S. at 19, 86 S. Ct., at 1242; *Aptheker v. Secretary of State*, supra; *N. A. A. C. P. v. Button*, supra; *Saia v. People of State of New York*, 334 U. S. 558, 68 S. Ct. 1148, 92 L. Ed. 1574; *Schneider v. State of New Jersey*, 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155; *Lovell v. City of Griffin*, 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949; cf. *Hague v. C. I. O.*, 307 U. S. 496, 515-516, 59 S. Ct. 954, 963-964, 83 L. Ed. 1423; see generally *Dombrowski v. Pfister*, 380 U. S. 479, 486, 85 S. Ct. 1116, 1120, 14 L. Ed. 2d 22. They seek to bar employment both for association which legitimately may be sanctioned and for association which may

prosecutions under the statute. As the Court clearly stated in *Dombrowski*, "appellants have challenged the statutes as overly broad and vague regulations of expression. We have already seen that where, as here, prosecutions are actually threatened, this challenge, if not clearly frivolous, will establish the threat of irreparable injury required by traditional doctrines of equity."⁴⁰

not be sanctioned consistently with First Amendment rights. Where statutes have an overbroad sweep, just as where they are vague, "the hazard of loss or substantial impairment of those precious rights may be critical," *Dombrowski v. Pfister*, *supra*, at 486, 85 S. Ct., at 1120, since those covered by the statute are bound to limit their behavior to that which is unquestionably safe.

⁴⁰ That this is all that is required to be shown to justify equitable relief where the challenge is to the *face* of the statute on the grounds of overbreadth is evident in light of the actual results in *Dombrowski*. The district court had refused to permit the taking of any evidence whatsoever in the original hearings and dismissed the complaint for failure to state a cause of action. Despite the absence of any factual record on the allegations of the complaint, this Court ordered the issuance of permanent injunctive relief without further hearings below restraining the enforcement of those provisions of the state statute which it found as a matter of law were void on their face as overbroad and vague in the area of free expression, and under which the state had concededly initiated prosecutions. Thus, it is clear that as to this branch of *Dombrowski*, where the attack is to facial constitutionality the only two criteria required to be met to justify permanent equitable relief are (1) overbreadth and vagueness in the area of the First Amendment, and (2) actual threatened prosecutions.

There is some confusion in the lower courts as to the impact of this *first* branch of the *Dombrowski* doctrine on the question of abstention. Cf. *Zwickler v. Koota*, 261 F. Supp. 985 (E. D. N. Y., 1966), probable jurisdiction noted, 87 S. Ct. 854, #29 October Term 1967. We would suggest that this confusion arises from a failure to analyze the fundamental premises of this Court's opinion in *Dombrowski*. The irreparable injury sufficient to invoke federal equitable power when a statute is attacked as overly broad or vague on its face in the First Amendment area flows basically from the *existence* of the statute. "So long as the statute remains available to the state the threat of prosecutions of protected expression is a real and substantial one. Even the prospect of ultimate failure of

The second category of circumstances in which federal equitable relief is appropriate under *Dombrowski* is where the state criminal statutes sought to be enforced may be otherwise valid but are being "applied for the purpose of discouraging protected activities". 380 U. S. at 490. This second branch of the *Dombrowski* analysis comes into play where the gravamen of the complaint is that the state "has invoked and threatens to continue to invoke criminal process without any hope of ultimate success, but only to discourage appellants' civil rights activities", 380 U. S. at 490.⁴¹ Where these threats to enforce state criminal statutes are "not made with any expectation of securing valid convictions, but rather are part of a plan to employ arrests . . . and threats of prosecution under color of the statutes to harass . . . and discourage" persons from "asserting and attempting to vindicate . . . constitutional rights", such threatened prosecutions have a "chilling effect upon the exercise of First Amendment rights" and justify the intervention of a federal court of equity. *Dombrowski v. Pfister*, *supra* at 482, 490.⁴²

such prosecutions by no means dispels their chilling effect on protected expression." 380 U. S. at 494. Thus a challenge to statutes as "overly broad and vague regulations of expression . . . if not clearly frivolous . . ." where "prosecutions are actually threatened . . . will establish the threat of irreparable injury required by the traditional doctrines of equity" 380 U. S. at 490. And as the Court then says "the same reasons [emphasis added] preclude denial of equitable relief pending an acceptable narrowing construction . . ." 380 U. S. at 490.

⁴¹ Such allegations the Court holds state a claim under the Civil Rights Act, 42 U. S. C. 1983, 380 U. S. at 490.

⁴² The various opinions in *Cameron* also emphasize this separate second category of criteria for injunctive relief established in *Dombrowski*. Thus, in his dissenting opinion, in which Mr. Justice Stewart and Mr. Justice Harlan joined, Mr. Justice Black commented after discussing the *facial* grounds for invoking *Dombrowski*, "*Dombrowski* also indicates to me that there might be cases in

The criteria for invoking federal equity power under the second branch of *Dombrowski* thus involves a showing that the state is using criminal statutes, possibly otherwise valid, without real expectation of ultimate success and that these prosecutions are for the purpose of discouraging protected constitutional activities.⁴³

which state or federal officers, acting under color of a law which is valid, could be enjoined from engaging in unlawful conduct which deprives persons of their federally guaranteed statutory or constitutional rights. Compare 17 Stat. 13, 42 U. S. C. §1983 (1958 ed.)." Similarly Mr. Justice White in his dissenting opinion in *Cameron* commented upon this second branch of the *Dombrowski* analysis: "Where threats of enforcement are without any expectation of conviction and are 'part of a plan to employ arrests, seizures, and threats of prosecution under color of statutes to harass,' it is obvious that defense in a state criminal prosecution will not suffice to avoid irreparable injury. The very prosecution is said to be a part of the unconstitutional scheme and the scheme, including future use of the statutes, are quite irrelevant to the prosecution in the state courts." See also *Mills v. Alabama*, 384 U. S. 214 (1966) (concurring opinion of Mr. Justice Douglas and Mr. Justice Brennan); and *City of Greenwood v. Peacock*, 384 U. S. at 829, Opinion of Mr. Justice Stewart for the Court: "If the state prosecution on trial on the charge of obstructing a public street or on any other charge would itself clearly deny their rights protected by the First Amendment, they may under some circumstances obtain an injunction in the federal court. See *Dombrowski v. Pfister*, 380 U. S. 479" (emphasis added).

⁴³ A fully developed discussion of this second branch of the *Dombrowski* analysis is contained in the decision of the Fifth Circuit in *Cox v. Louisiana*, *supra*. In this case Judge Wisdom analyzed the state criminal proceeding there involved as follows:

"The second prosecution is without any hope of success. The district attorney's transparent purpose is to harass and punish the petitioner for his leadership in the civil rights movement, and to deter him and others from exercising rights of free speech and assembly in Louisiana—in this instance, by advocating integration of public accommodations".

On these allegations Judge Wisdom concluded:

"A civil complaint asserting such an abuse of the prosecutorial function would state a claim under the Civil Rights Act, 42 U. S. C. 1983, and justify injunctive relief, *Dombrowski v. Pfister*, 1965, 380 U. S. 479."

Having delineated the criteria to be utilized in considering the propriety of federal equitable relief in both of these two categories the Court went on to dispose of the abstention doctrine as "inappropriate" in either of the two branches of the *Dombrowski* analysis. Where state criminal statutes are challenged as "overly broad and vague regulations of expression", abstention as a rule of federal adjudication plays no role. As Mr. Justice Brennan pointed out, in such cases "abstention is at war with the purposes of the vagueness doctrine." 380 U. S. at 492. And similarly where state criminal statutes even if otherwise valid are applied "for the purpose of discouraging protected activities" abstention is equally "inappropriate." 380 U. S. at 490. For as the Justice again explained, "the interpretation ultimately put on the statutes by the state courts is irrelevant." 380 U. S. at 490. The central principle which emerges from *Dombrowski* is clear: Where the criteria for the invoking of federal equitable power are met a federal court has the duty to adjudicate the questions involved and issue the injunction prayed for. It may not abstain from this responsibility under the Constitution. As Circuit Judge Wisdom commented in *Cox v. Louisiana, supra*, in such cases "there is no federal invasion of states' rights. Instead, there is rightful federal interposition under the Supremacy Clause of the Constitution to protect the individual citizen against state invasion of federal rights."

2. *The evidence adduced before the lower court at the hearing on remand indicates that injunctive relief is proper in light of the criteria set forth in Dombrowski*

We turn now to the central issue in this appeal—the question placed by this Court to the district court in the original remand—whether relief is proper in light of the criteria set forth in *Dombrowski*, 381 U. S. 741, 742. This question now comes before the Court for the first time based upon a full evidentiary record (App. 105 to 284). This Court is now able to evaluate within the context of the full record “the setting in which the statute operates,” *NAACP v. Button*, 371 U. S. 415 and can examine its constitutionality “in terms of its ‘immediate objectives’, its ‘ultimate impact’ and its ‘historical context and conditions existing prior to its enactment’” *Reitman v. Mulkey*, 385 U. S. 967, (Opinion of Mr. Justice White for the Court): .

An examination of the record evidence now before the Court for the first time will reveal, we suggest, once again “the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application” *NAACP v. Button*, *supra* at 433. *Dombrowski v. Pfister*, *supra* at 487. Furthermore, the record now before the Court will reveal an “invidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment” which results in “censorship in a most odious form, unconstitutional under the First and Fourteenth Amendments” *Cox v. Louisiana*, 379 U. S. 559, 580, 581 (concurring and dissenting opinion of Mr. Justice Black). Under the criteria set forth in both branches of *Dombrowski* injunctive relief is proper and necessary.

- a. **The uncontested evidence at the hearing reveals that the statute here challenged has been selectively enforced rendering it violative of the First and Fourth Amendments**

In *NAACP v. Button*, 371 U. S. 415, this Court warned against a statute which "lends itself to selective enforcement against unpopular causes". In *Button*, this was only a prophecy and yet the statute there involved fell. In *Cox v. Louisiana*, 379 U. S. 536, the prophecy became a reality when the Court refused to enforce a Louisiana "obstructing public passages" statute, in face of record concessions before the Court that the Louisiana statute had been "selectively enforced."

Since *Cox* the Court both in majority and dissenting opinions has consistently condemned "the vice of discriminatory enforcement" *Brown v. Louisiana*, 383 U. S. 131, 151 (dissenting opinion of Mr. Justice Black, joined in by Mr. Justice Clark and Mr. Justice Stewart). See also *Brown v. Louisiana*, *supra* (opinion for Court by Mr. Justice Fortas at p. 143, concurring opinion of Mr. Justice Brennan at p. 143); and cf.: *Adderly v. Florida*, 385 U. S. 39, at p. 47. The open admissions of the Mississippi state authorities at the remand hearing that the statute here under attack has similarly been selectively enforced become dispositive of the constitutional questions in light of these recent expressions by the Court.

In *Cox*, the Court was concerned with the impact of three Louisiana statutes. One of these was the state "obstructing public passages" statute, a provision very similar to the Mississippi statute here under examination. The Louisiana statute provided as follows in its relevant sections:

"Obstructing Public Passages"

"No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, watercraft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein."

The appellant in *Cox* challenged his conviction under this statute as an "unconstitutional infringement upon freedom of speech and assembly" 379 U. S. at 554. The facts in the record showed a clear "obstruction" of a public sidewalk by a civil rights march across the street from the city courthouse, 379 U. S. at 553. Mr. Justice Goldberg, in the opinion for the Court did not find it necessary to reach the troublesome and yet unresolved question of the "constitutionality of the uniform, consistent, and nondiscriminatory application of a statute forbidding all access to streets and other public facilities for parades and meetings." 379 U. S. at 555.⁴⁴ For in *Cox*, the record before the Court revealed a practice of "selective enforcement" of the statute rendering it violative of the First and Fourteenth Amendments. 379 U. S. at 558. And as Mr. Justice Goldberg pointed out for the Court "although the statute here involved on its face precludes all street assemblies and parades, it has not been so applied and enforced by the Baton Rouge authorities" 379 U. S. at 556.

⁴⁴ The Court left this question completely open in *Cox*. See Footnote 13, 379 U. S. at 555. Cf. *Kovacs v. Cooper*, 336 U. S. 77, 98 (opinion of Mr. Justice Jackson) with *Hague v. CIO*, 307 U. S. 496, 515 (opinion of Mr. Justice Roberts).

The "selective enforcement" which rendered the statute violative of the First and Fourteenth Amendments was evidenced in the *Cox* record below by "city officials who testified for the State . . . that certain meetings and parades are permitted in Baton Rouge, even though they have the effect of obstructing traffic, provided prior approval is obtained". This record testimony was "confirmed in oral argument before this Court by counsel for the State" 379 U. S. at 556. The statement of counsel for Louisiana, which became central to the opinion of the Court, was "that parades and meetings are permitted, based on 'arrangement . . . made with officials'" 379 U. S. at 556. Furthermore, as Justice Goldberg pointed out, "the statute itself provides no standards for the determination of local officials as to which assemblies to permit or which to prohibit" 379 U. S. at 556. Justice Goldberg summed up this record evidence in this fashion: "From all the evidence before us it appears that the authorities in Baton Rouge permit or prohibit parades or street meetings in their completely uncontrolled discretion" 379 U. S. at 557.

Based upon this concession and the record evidence of selective enforcement of the statute, the Court held that the use of the statute was "an unwarranted abridgement of appellant's freedom of speech and assembly secured to him by the First Amendment, as applied to the States by the Fourteenth Amendment" 379 U. S. at 558. This conclusion rested upon the analysis of the Court that "the situation is thus the same as if the statute itself expressly provided that there could only be peaceful parades or demonstrations in the unbridled discretion of local officials". Justice Goldberg went on to point out that "the pervasive restraint on freedom of discussion by the practice of the

authorities is not any less effective than a statute expressly permitting such selective enforcement" 379 U. S. at 557. Accordingly, the Court held that under the authority of "a long line of cases in this Court,"⁴⁵ it is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups either by use of a statute providing a system of broad discretionary licensing power or, as in this case, the equivalent of such a system by selective enforcement of an extremely broad prohibitory statute" 379 U. S. at 558. This holding commanded a large majority of the Court, the Chief Justice, Mr. Justice Brennan, Mr. Justice Douglas, and Mr. Justice Stewart joined in the majority opinion of Mr. Justice Goldberg. Mr. Justice Black and Mr. Justice Clark concurred in separate opinions strongly condemning the selective enforcement of the statute.⁴⁶

The record evidence and concessions of "selective enforcement" of the Mississippi statute developed at the remand hearing is even stronger than the record evidence of "selective enforcement" of the Louisiana statute in *Cox v. Louisiana*.

As in *Cox*, officials here in *Cameron*, have "testified for that state" that "certain meetings and parades are per-

⁴⁵ *Schneider v. State*, 308 U. S. 147; *Lovell v. Griffin*, 303 U. S. 444; *Hague v. CIO*, *supra*; *Largent v. Texas*, 318 U. S. 418; *Saia v. New York*, 334 U. S. 558; *Niemotko v. Maryland*, 340 U. S. 268; *Kunz v. New York*, 340 U. S. 290.

⁴⁶ Mr. Justice Black found that this evidence of selective enforcement rendered the Louisiana statute "unconstitutional under the First and Fourteenth Amendments," as well as "an invidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment" 379 U. S. at 581. Mr. Justice Clark would have limited the holding to the "equal protection ground." 379 U. S. at 591.

mitted in" Hattiesburg, "even though they have the effect of obstructing traffic, provided prior approval is obtained". Cf. 379 U. S. at 556. And precisely as in *Cox*, this was confirmed by counsel for the state, both in examination and oral argument.

The testimony is uncontradicted, and indeed it is conceded by the state, that a number of parades and marches which have "obstructed" public streets and have "obstructed" traffic, have in fact been permitted to take place in Hattiesburg subsequent to the enactment of the Mississippi statute, and its immediate enforcement against Negro voter registration activities (App. 194, 195, 196, 197, 235, 236, 237, 264, 264-5, 265-6, 266, 266-7). These parades and marches held by civic groups and schools (App. 235-6, 236), such as homecoming demonstrations for Mississippi Southern (App. 236, 264), as in *Cox*, admittedly obstructed traffic in the public streets and blocked off access to public buildings (App. 195, 235-6, 236, 264-5). Both Mr. Wells, as counsel for the state, and Mr. Dukes, the County Prosecuting Attorney for Forrest County, conceded on the record that these parades, permitted by the city, blocked public streets. See, for example, examination of Mr. Dukes (App. 264-5, 266).

The State did not suggest at the hearing below that these parades and marches did not "obstruct" the streets or "block" traffic. Their position in open court was precisely the same as that taken by the Louisiana authorities in *Cox*. Their argument was that these parades were permitted upon arrangements made with the city officials. Cf. 379 U. S. at 556. Thus, Mr. Wells, counsel for the State in this proceeding, addressed the following question to Reverend Cameron, a witness for the appellants, who had just testi-

fied that several school parades had been recently held in Hattiesburg which blocked off the streets and obstructed traffic (App. 194-5):

"Mr. Wells: Reverend Cameron, these parades you are talking about are parades where people had made arrangements with the City to participate and have just what's a normal parade like you have a parade for the fair and Christmas and things like that, wasn't it?" (App. 195).

On cross-examination by counsel for the appellants, Mr. Dukes, the County Prosecuting Attorney, made the following direct admissions:

"Q. Now, Mr. Dukes, have there been any parades in Forrest County particularly in Hattiesburg since the arrests of May 18th? A. Yes, sir, parades, schools (sic) which included white and colored bands, school children, cheer leaders, floats and so forth.

"Q. Do these parades ever block the streets? A. Well, I am sure they did but I didn't ever hear anybody complain about it though.

"Q. Did you ever advise Bud Gray [the Sheriff] that they were in violation of this statute? A. No, sir, because I was informed they had permission of the City, the mayor and commissioners.

"Q. Now does this statute contain anything about getting a permit to hold a parade? A. No sir, sure doesn't" (App. 264, 264-5).

Based upon this testimony by the County Attorney and the record concessions by counsel for Mississippi, the conclusion is inescapable that as in *Cox*, the selective enforce-

ment of the Mississippi statute renders it violative of the Constitution. Here, as in *Cox*, it is undisputed that "certain meetings and parades are permitted . . . even though they have the effect of obstructing traffic, provided prior approval is obtained" 379 U. S. at 556. Here, as in *Cox*, these parades are permitted based on "arrangements . . . made with officials". And here, as in *Cox*, "the statute itself provides no standards for the determination of local officials as to which assemblies to permit or which to prohibit". 379 U. S. at 556.

What is most striking about the testimony and concessions here is that it underscores vividly the reasoning and conclusions enunciated by this Court in *Cox* in explaining the constitutional evil in the selective enforcement of a statute which touches the areas of free expression. The vice in the selective enforcement of a broad prohibitory statute, this Court pointed out in *Cox*, is equivalent to the "lodging of such broad discretion in a public official" which "allows him to determine which expression of views will be permitted and which will not." This "sanctions a device for the suppression of the communication of ideas and permits the official to act as censor". 379 U. S. at 557. For, as the Court pointed out, "the pervasive restraint on freedom of discussion by the practice of the authorities under the statute is not any less effective than a statute expressly permitting such selective enforcement". 379 U. S. at 557.

But this discretion which the statute appears to vest in the state officials to decide *which* parades obstructing streets should be banned and which approved, is *precisely* the justification offered by the appellees here for their selective enforcement of the statute against civil rights dem-

onstrators. Both Mr. Wells and Mr. Dukes sought to explain the selective enforcement in terms of the "type" of parade permitted and the "type" suppressed. Thus, in the questioning of Reverend Cameron, Mr. Wells suggests the following:

"Q. Well, they [the parades permitted] weren't demonstrations and picketing *type* parade, it was just a parade like most cities and towns have from time to time, wasn't it?" (App. 195). (Emphasis added.)

Again, in the same cross-examination, Mr. Wells suggests:

"Q. You don't class that kind of parade in the same category as picketing around a court house, do you?

[Objection was overruled.]

Q. You don't put that in the same class with the *type* of picketing you all were doing, do you? (Emphasis added.) A. Well, it was not for the same purpose.

Q. That's right" (App. 196).

Nothing could be clearer than that the Mississippi authorities have utilized this "extremely broad prohibitory statute", cf. *Cox*, 379 U. S. at 558, to distinguish between conduct prohibited by the statute and conduct sanctioned by it on the grounds of the "*purpose*" of the activity. If it is the "type" of parade which is "normal" (App. 195), which everyone "likes" (App. 195), which no one "complains" about (App. 264), if in short, the city agrees with the "purpose" of the parade (App. 195), it does not matter if it obstructs the public streets. It will be permitted. If, on the other hand, it is a different "type" of parade or

demonstration (App. 195), if it has a different "purpose" (App. 195), it will be banned. But this is precisely what the Constitution prohibits. The Mississippi authorities in this proceeding have candidly conceded that in enforcing the statute they wield "a broad discretion" in determining "which expression of views will be permitted and which will not. Cf. *Cox*, 379 U. S. at 536. If the parade which obstructs the streets has a purpose which meets with general community approval, the statute is not enforced. If the parade has a different purpose, perhaps in sharp opposition to the "politically dominant white community," cf. *NAACP v. Button*, 371 U. S. 415, then, as in the present situation, the statute will be enforced against the marchers. This the Constitution will not tolerate. *Cox v. Louisiana*, *supra*; *Brown v. Louisiana*, *supra* (majority and dissenting opinions); *Adderly v. Florida*, *supra*.

Mississippi additionally seeks to justify this admitted selective enforcement of the statute by pointing out that the Mississippi law, unlike the Louisiana law, makes criminal only "picketing" and "mass demonstrations" which obstruct public streets. The parades which obstructed streets but were permitted were not "mass demonstrations", so the argument goes. But this effort to avoid the impact of *Cox* merely serves to underscore the total constitutional invalidity of the statute. It is the very breadth and imprecision of the term "mass demonstration" which permits the state to assume that a "demonstration" which expresses majority sentiments of public opinion, such as a welcome to a football team is not a "mass demonstration", but is a parade. However, a much smaller gathering which expresses minority sentiments perhaps hostile to the majority climate is a "mass demonstration". But the dictionary definition of a "demonstration" is a "public exhibition of

welcome, approval, or condemnation, as by a mass meeting or procession". *Funk & Wagnall's New College Standard Dictionary*. Another definition of "demonstration" is found in the *Shorter Oxford English Dictionary*; 3rd, Edition: "a public manifestation of feeling; often taking the form of procession and mass meeting". Clearly, the dictionary definition of "demonstration" broadly sweeps into its orbit all public "manifestations of feeling" or "exhibitions" of welcome, approval or condemnation", which take the form of mass meetings or processions. Mississippi, however, seeks to use this imprecise and broadly contoured characterization to pick and choose these "manifestations of feeling" it desires to permit and those it desires to prohibit. If the "public manifestation of feeling" reflects the views of the dominant majority, if it expresses safe and comfortable views like expressions of welcome to a football team, or manifestations of school spirit and pride, then it is not a "demonstration" but a "parade". If, on the other hand, the "public manifestation of feeling" reflects unpopular views such as opposition to the community favored policy of Negro disenfranchisement, then it becomes a "demonstration" prohibited by the statute. The very structure of the statute enables the Mississippi authorities "to determine which expression of view will be permitted and which will not". *Cox v. Louisiana, supra*. It is constructed deliberately through the use of the terms "mass demonstration" to permit "invidious discrimination among persons or groups", and it has been so enforced. Under the commanding authority of *Cox v. Louisiana*, "it is clearly unconstitutional". 379 U.S. at 557. See also *Brown v. Louisiana*, and *Adderly v. Florida*, both *supra*.

The record evidence which led Circuit Judge Rives to conclude that "this is a case of selective enforcement" and

that "If there is anything 'consistent' or if any 'uniformity' appears in this record, it is that Section 2318.5 was consistently used to harass the civil rights movement in Hattiesburg" (App. 81), is further reinforced by the uncontested testimony as to the actual events on the morning of April 10th, when the statutes were first applied against the civil rights demonstrators. At the very moment the police were arresting the demonstrators who were patrolling the area formerly cordoned off for that purpose by the sheriff, a crowd of white people had gathered on the sidewalks and courthouse steps to watch the arrests (App. 122, 123, 144, 161-2). None of those who crowded about the scene obstructing the courthouse entrances were arrested.

The following is a description of the scene given by appellants' witness Reverend John Mehl on cross examination by Mr. Wells:

Q. You were asked by counsel about some groups that were there and asked whether or not they were arrested. Now I believe you pointed out that some of these groups were over here by Sears? A. Yes, sir.

Q. That's across the street from the courthouse? A. Yes, sir.

Q. And then there were some people on the steps [of the courthouse itself]? A. Yes, sir.

Q. Were they demonstrating or picketing in any way or just standing there? A. They were just spectators.

Q. How many? A. Well, there was a tight knot of people, a tight knot of people . . .

Q. Anyone obstructing any part of an entrance or anything? A. They were obstructing the main entrance to the courthouse.

Q. This big entrance to the courthouse here? A. Yes, sir.

Q. How many would you say were there? A. I would say there were 20 or 25 on the steps; there was a tight knot of people blocking the sidewalk.

Q. Were they demonstrating or picketing? A. They were not there demonstrating and I didn't recognize any of them, some of them were newsmen.

Q. They were not demonstrating or picketing were they? A. They were not.

Mr. Wells: That's all if the Court please (App. 170-172). See also. (App. 144-145, 146-7, 161-2, 162, 174, 193-4, 275-6).

This testimony describing the crowds who gathered obstructing and blocking the courthouse was never contradicted. It is of course perfectly clear that the Mississippi authorities were not concerned with the fact of obstruction of the sidewalks and court entrance but rather with the fact that, the white "obstructors" were not civil rights demonstrators. And yet the majority below has found that "the blocking of the sidewalks and entrances and interfering with the free use of the courthouse sidewalks and entrances are the gravamen of the offense" (App. 44).

The irony in the portion of the majority opinion below which is addressed to the evidence of selective enforcement of the statute is extraordinary. The majority below wrote:

"Plaintiffs also say that the action of City (not County) authorities in permitting the use of the streets for school parades and the like, a practice customarily

enjoyed by the community as a part of ordinary community activities, participated in by all races, constitutes selective enforcement of the statute and this invalidates it. We cannot agree with this argument. We are not here dealing with parades carried on by common consent on the public streets" (App. 48).

The lower court perhaps inadvertently has placed its finger on the heart of the problem. Appellants' activities were not "a part of ordinary community activities." They were not "a practice customarily enjoyed by the community". However, House Bill 546 does not contain, on its face, an exception for "school parades and the like". Clearly, even if it had contained such an exception, the statute would violate on its face, the Equal Protection Clause of the Fourteenth Amendment. See the concurring opinion of Mr. Justice Black in *Cox v. Louisiana, supra*. But more fundamentally, when the right of freedom of expression of Negro citizens is relegated to a second-class position below "school parades and the like" because such expression is not engaged in "by common consent" of the community then the protection which the federal constitution affords to those expressing unpopular views becomes totally meaningless.

As Mr. Justice Black wrote in *Cox v. Louisiana, supra*, on reviewing the convictions for obstructing public passages,

"I believe that the First and Fourteenth Amendments require that if the streets of a town are open to some views, they must be open to all . . . And to deny this appellant and his group use of the streets because of their views against racial discrimination, while allow-

ing other groups to use the streets to voice opinions on other subjects, also amounts, I think to an invidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment." 379 U. S. at 580-581.

This record evidence together with the concessions of the state officials which demonstrate beyond any question the selective enforcement of the Mississippi statute were not before this Court on the original appeal. The evidence was developed and the concessions made for the first time in the testimonial hearing on the remand. Thus, the question of the legal consequences which now flow from this total pattern of selective enforcement comes to this Court as a wholly *de novo* matter. Neither the *per curiam* opinion, nor the two dissenting opinions in the former proceedings before this Court reach this question.

We would suggest that although there have recently been sharp divisions within the Court as to limits of permissible conduct within the boundaries of the First Amendment, cf. *Brown v. Louisiana*, *supra*, and *Adderly v. Florida*, *supra*, there has been striking unanimity in both majority and dissenting opinions as to the fundamental infirmity under the First and Fourteenth Amendments of statutes which suffer from "the vice of discriminatory enforcement" *Brown v. Louisiana*, *supra*, at p. 151 (opinion of Mr. Justice Black, joined in by Justices Harlan, Stewart and Clark).

For example, Mr. Justice Black has suggested on several occasions that a state may have the constitutional power to "bar all picketing on its streets and highways". See *Cox v. Louisiana*, 379 U. S. at 575; *Labor Board v. Fruit & Vegetable Packers*, 377 U. S. 58, 76; *Cameron v. Johnson*,

dissenting opinion at p. 742. The majority of the Court has regarded this as an open question. See *Cox v. Louisiana*, 379 U. S. at 555. But Mr. Justice Black has strongly rejected as unconstitutional under both the First and Fourteenth Amendments any statute purporting to regulate or prohibit picketing or demonstrating which is selectively enforced against certain groups or types of picketing. This is the clear meaning of his concurring opinion in *Cox*, 379 U. S. at 580. As the Justice so sharply pointed out, the selective enforcement of the Louisiana statute means that "Louisiana is attempting to pick and choose among the views it is willing to have discussed on its streets", 379 U. S. at 581. These words of Mr. Justice Black in *Cox* apply with striking force to the new record in *Cameron*. Here now, as in *Cox*, Mississippi is "trying to prescribe by law what matters of public interest people whom it allows to assemble on its streets may and may not discuss", 379 U. S. at 581. And here, as in *Cox*, the conclusion is inevitable that this is "censorship in a most odious form, unconstitutional under the First and Fourteenth Amendments", 379 U. S. at 581. And furthermore as in *Cox*, "city officials despite this statute have permitted favored groups . . . to block the streets with their gatherings", 379 U. S. at 581. This, as Justice Black concluded in *Cox*, is "an invidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment". 379 U. S. at 581. This new record testimony and concessions of selective enforcement in the hearing below now invoke the constitutional conclusions of Mr. Justice Black in his *Cox* concurring opinion.⁴⁷ See also Mr. Justice Black's dissenting opinion in *Brown v. Louisiana*, *supra*.⁴⁸

⁴⁷ It should be pointed out that Mr. Justice Stewart, who joined Mr. Justice Black in his *Cameron* dissent, also joined the majority

The recent decision of the Court in *Adderly v. Florida*, 385 U. S. 39 (1966) is instructive in this respect. Although the Court divided sharply on the question of the applicability of the First Amendment to the conduct of the petitioners on the record presented, cf. the opinion of Mr. Justice Black for the majority of the Court, 385 U. S. at p. 40, with the dissenting opinion of Mr. Justice Douglas, 385 U. S. at p. 48; the majority carefully reaffirms the conclusions of *Cox v. Louisiana* in respect to the constitutional vice of the selective enforcement of a statute. Thus the majority opinion points out that in the *Adderly* record "there is no evidence at all that on any other occasion had similarly large groups of the public been permitted to gather on this portion of the jail grounds for any purpose" 385 U. S. at 47.⁴⁹ Accordingly the *Adderly* majority con-

in *Cox* in striking down the "obstruction" conviction based upon the concessions of selective enforcement. In all, seven members of the Court clearly agreed that a conceded pattern of selective enforcement renders a statute in the area of free expression violative of the First and Fourteenth Amendments. Mr. Justice White and Mr. Justice Harlan held back from the *Cox* conclusions concerning selective enforcement on the ground that the question was not "urged or litigated by the parties either in this Court or the courts below". They suggested that "the parties have had no opportunity to develop or to refute the factual basis underlying the Court's rationale". 379 U. S. at 592, 593. Of course, here the parties have had full opportunity to develop and to refute the factual basis underlying the conclusion of "selective enforcement."

⁴⁸ In *Brown*, Mr. Justice Black distinguished his concurring vote in *Cox* from his dissent in *Brown* on the absence of evidence of selective enforcement, pointing out that "furthermore the vice of discriminatory enforcement which contaminates the 'public street' phase of the statute, does not beset the statute's applicability to activity in public buildings", *supra* at p. 151.

⁴⁹ The majority opinion in *Adderly* here restates in Footnote 6, 385 U. S. at 47, the insistence of the *Cox* Court that "properly drawn" statutes permitting officials to regulate the use of the streets be enforced "with uniformity of method of treatment . . . free from improper or inappropriate considerations and from unfair discrimination".

cludes that "Nothing in the Constitution of the United States prevents Florida from *even-handed enforcement* of its general trespass statute . . ." 385 U. S. at 47 (emphasis added).

The record now before the Court reveals that Mississippi has not engaged in "even-handed enforcement" of the statute here challenged. Cf. *Adderly v. Florida, supra*. Rather, the statute is infested with "the vice of discriminatory enforcement" *Brown v. Louisiana*, 383 U. S. at 151, and the pattern of enforcement is one of "invidious discrimination," *Cox v. Louisiana*, 379 U. S. at 581. If such a statute is now to be given constitutional sanction and if federal power is denied to protect citizens from the devastating impact of such selective enforcement of a criminal statute in the area of First Amendment liberties, cf. *Cox v. Louisiana, supra* and *Dombrowski v. Pfister, supra*, then the somber warning of the four dissenting Justices in *Adderly* that "by allowing these orderly and civilized protests against injustice to be suppressed, we only increase the forces of frustration which the conditions of second-class citizenship are generating among us", assumes new and serious urgency.

- b. The insertion of the word "unreasonably" in the statute raises new questions of unconstitutional vagueness and overbreadth not before this Court on the original appeal

Subsequent to the filing of the complaint and the original hearings below, the Mississippi legislature amended the statute by inserting the word "unreasonably" so that the text now reads, "so as to obstruct or *unreasonably* interfere" (App. 259). The constitutional effect of this amendment was not considered by the original three-judge court,

and in fact this Court on the first appeal considered the statute only in its original form prior to amendment. See text of statute quoted in full in the dissenting opinion of Mr. Justice Black.⁵⁰ 381 U. S. at 743, 749.

We would suggest that the addition of the word "unreasonably" in this prohibitory statute raises new and serious questions of unconstitutional vagueness in the area of free expression beyond those considered by the members of the Court who touched upon the constitutional questions in their opinions in the first appeal. And we would suggest that this new dimension in the constitutional problem now brings the statute fully into the sweep of the majority and concurring opinions in *Cox v. Louisiana*, holding the Louisiana breach of the peace statute on its face "so broad as to be unconstitutionally vague under the First and Fourteenth Amendments". 379 U. S. at 576. "

The constitutional impact of the insertion of the word "unreasonably" into the statute is most graphically illustrated by the following colloquy during the hearing below with Mr. Dukes, the law officer responsible for the enforcement of the statute in Forrest County:

"Q. Well now, Mr. Dukes, you are a law enforcement official of the county are you not? A. I am Prosecuting Attorney.

Q. That's right. Now you are required to advise these law enforcement officials like Mr. Gray as to the law are you not? A. Yes sir.

⁵⁰ The text of the statute quoted by Mr. Justice Black and the basis of his opinion is the original unamended form of the statute which omits the word "unreasonably". The district court on the remand took judicial notice of the new wording (App. 103-4, Exh. D-5).

Q. Now if these people were walking four feet apart would you advise Mr. Gray that they were violating this statute? A. If they were walking four feet apart?

Q. Yes sir. A. I don't know, I would have to see it first.

Q. Well, what if they were walking— A. (Interrupting) We set no scale as to 3 feet, 4 feet or 2 feet as such. The general thing I guess you would say that if they were walking so close together that it was it would have prevented a person from reasonably going through the line then they would have—

Q. (Interrupting) Well how do you reasonably go through a line, Mr. Dukes? A. Well, the question of what is reasonable I believe, Mr. Smith, is one that people differ on.

Q. That's right, something that I could think would be reasonable you might not think so reasonable is that right? A. That's right" (App. 257-258).

See, also, App. 259, 260, 262, 281-282.

This colloquy presents the heart of the constitutional problem of vagueness in the First Amendment area. Cf. *Ashton v. Kentucky*, 384 U. S. 145 (1966). If "the question of what is reasonable" is "one that people differ on", and if "unreasonably" becomes the dividing line between prohibited and permitted activity, then in truth, "such a statute does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat". See Mr. Justice Black, concurring in striking down the Louisiana breach of the peace statute in *Cox v. Louisiana*, 379 U. S. at 579. The recent insertion of the word "unreasonably" now

makes it crystal clear that "this kind of statute provides a perfect device to arrest people whose views do not suit the policeman or his superiors, while leaving free to talk anyone with whose views the police agree". Mr. Justice Black, *supra*, at 579. See also *Feiner v. New York*, 340 U. S. 315, 321 (dissenting opinion). Whatever one may say about the unconstitutional vagueness of the statute on its face prior to the inclusion of the word "unreasonably", cf. the dissenting opinion of Mr. Justice Black in *Cameron*, with the dissenting opinions below of Circuit Judge Rives,⁸¹ it is now perfectly clear that the insertion of "unreasonably" as the dividing line between permitted and prohibited activity, renders the statute void on its face for vagueness under *both* the approaches of Mr. Justice Black, 381 U. S. 472, and Circuit Judge Rives (App. 41 and App. 77). The entire question of the right to engage in activities within the penumbra of the First Amendment has now wholly passed to the policeman who must apply his own subjective understanding of what is "reasonable". The sensitive question of the right of citizens to exercise First Amendment liberties now turns on a "policeman [who] makes a decision on his own personal judgment" that the picketing or marching is "unreasonable" interference. 379 U. S. at 559. The testimony of Mr. Dukes,

⁸¹ Circuit Judge Rives in his original dissenting opinion would have held that it would be "difficult to conceive of a statute drawn in broader or more vague and sweeping terms than here under attack. In my opinion, the statute is so clearly unconstitutional that this case is hardly 'one required . . . to be heard and determined by a district court of three judges,'" 244 F. Supp. at 846. In his dissenting opinion after the remand hearing Circuit Judge Rives wrote that the record testimony required a conclusion that "the application of the statute in this case illustrates how vague the statute really is and compels the conclusion that it is unconstitutional on its face" (App. 75).

the Prosecuting Attorney, as well as Deputy Sheriff Morgan as to the subjective determinations they go through to decide whether picketing or marching is "unreasonable" interference, R. 294, 298, 303, 305, 337, 338, dramatically illustrate the truth of Mr. Justice Black's words in *Cox*, that such a statute provides for "government by the moment-to-moment opinions of a policeman on his beat." 379 U. S. at 559.

There are no precise narrowly drawn standards in the statute to guide the arresting officer as to when a citizen who is picketing or marching is "unreasonably" interfering with free ingress or egress. Cf. *Edwards v. South Carolina*, 372 U. S. 229. Nor are there any administrative rules or regulations. Everything is left to the discretion and judgment of the arresting officer. He alone must decide without standards or criteria what is the "unreasonable" interference. In the words of Mr. Justice Black in *Cox*, "in this situation I think *Edwards v. South Carolina* and other such cases invalidating statutes for vagueness are controlling". 379 U. S. 579.

Moreover, as Circuit Judge Rives points out in his dissenting opinion below, the record now before the Court demonstrates dramatically the fact that Mississippi now has "by a broad, vague statute given policemen an unlimited power to order people off the streets, not to enforce a specific, non-discriminatory state statute forbidding patrolling and picketing but rather whenever a policeman makes a decision on his own personal judgment . . ." *Cox v. Louisiana*, 379 U. S. at 579. (Opinion of Mr. Justice Black.) Putting aside the question, which we will discuss later, as to whether the picketing on the morning of April 10th could possibly support a constitutional application

of the statute, see Point II d, *infra*, and Exhibits P-1, 2, and 4 (App. 95, 96 and 97), not even the lower court majority maintains that the arrests that afternoon of Mrs. Williams and the nine youngsters (App. 183), or the arrests on the next morning of seven demonstrators (App. 200) or the final arrests on May 18 of nine demonstrators (App. 263-64), were based upon any conceivable claim of "obstructing" any sidewalks or entrances. The state put no evidence in at all of any "obstruction" during these episodes. The majority below disposed of the question simply by ignoring these episodes. We do not understand anyone to seriously contend that the simple, peaceful picketing on the afternoon of April 10th, the morning of April 11th, and on May 18th was not constitutionally protected. *Edwards v. South Carolina*, 372 U. S. 229. A statute which on its face and as construed by the enforcing officers purports to authorize this extraordinary invasion of the ability of American citizens to "exercise . . . these basic constitutional rights in their most pristine and classic form" *Edwards v. South Carolina*, 372 U. S. at 235, is "unconstitutional in that it sweeps within its broad scope activities that are constitutionally protected free speech and assembly" *Cox v. Louisiana*, 379 U. S. at 552.

Whether the addition of the word "unreasonably" now introduces the constitutional vice of vagueness and overbreadth into an otherwise acceptable statute, *cf.* Mr. Justice Black dissenting in *Cameron*, 381 U. S. at 742, and Mr. Justice White dissenting, 381 U. S. at 757, or whether it merely reinforces the conclusion that the statute as originally written was overly broad and vague, *cf.* the dissenting opinion of Circuit Judge Rives in *Cameron* and the majority opinion of Mr. Justice Goldberg for the Court in *Cox*, we would suggest that it is now perfectly clear that

the Mississippi statute as amended is constitutionally invalid under "*Edwards v. South Carolina* and other such cases invalidating statutes for vagueness". 379 U. S. at 579.⁵² This is a statute which turns over to the policeman unlimited power based upon his own personal judgment as to what is "reasonable", to decide what views may be expressed on the streets. This the Constitution prohibits. *Edward v. South Carolina, supra; Cox v. Louisiana, supra.*

- c. The criteria in *Dombrowski* for the exercise of federal equity power where the challenge is to an overbroad statute in the area of free expression have been fully met

The criteria laid down in the first branch of the *Dombrowski* analysis, where the challenge is to an overbroad statute in the area of free expression have been fully met. Whatever questions may have existed concerning the constitutionality of the Mississippi law have now been laid to rest as a result of the hearing on this Court's remand.⁵³

⁵² The majority of the Court in *Adderly v. Florida, supra*, sustained the Florida statute there under consideration from a vagueness attack on the grounds that the inclusion of the terms "with a malicious and mischievous intent" . . . "makes its meaning more understandable and clear," 385 U. S. 42, 43 and footnote 2. As Circuit Judge Rives has pointed out the Mississippi statute unlike the Florida statute "requires no specific intent," 267 F. Supp. 893. Moreover the Mississippi statute unlike the Florida trespass statute on its face intrudes on First Amendment areas, *Cox v. Louisiana, supra, Edwards v. South Carolina, supra.*

⁵³ In a certain sense the value of the remand becomes more apparent after a realization of the clarification and sharpening of the constitutional questions which the new record permits. Cf. *Cox v. Louisiana*, 379 U. S. at 591 (concurring and dissenting opinion of Mr. Justice White, joined in by Mr. Justice Harlan). Here, unlike in *Cox*, "the parties have had . . . opportunity to develop or to refute the factual basis underlying the Court's rationale," 379 U. S. at 593.

The overbreadth of this statute which occasioned the original finding of Circuit Judge Rives that "it is difficult to conceive of a statute drawn in broader or more vague and sweeping terms", is now established beyond any shadow of a doubt. Both the subsequent introduction into the face of the statute of the word "unreasonably" and the striking new testimony concerning the subjective approach to selective enforcement which the statute permits have, as we have seen above, illustrated once again the fundamental considerations underlying the doctrine of unconstitutional overbreadth in the area of the First Amendment. This record, perhaps more vividly than any other recently developed, helps to explain the deep concern of the Court expressed first in *Button* and then restated in *Dombrowski*, with the "danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application". *NAACP v. Button*, 371 U. S. at 433; *Dombrowski v. Pfister*, 380 U. S. at 487.

At the heart of this concern is the stark realization that an overbroad statute in the area of free expression results in turning over the most precious freedoms of American citizens to the subjective mercies of "the moment-to-moment opinions of a policeman on his beat". Mr. Justice Black concurring in *Cox*, 379 U. S. at 579. Statutes of this type permit the state to marshal "the full force of its criminal law to enforce its social philosophy through the policeman's club". *Bush v. New Orleans School Board*, 194 F. Supp. 182 (three-judge district court for the Eastern District of Louisiana, opinion by Circuit Judge Rives).⁵⁴ But the right to

⁵⁴ It is interesting that the Court in *Dombrowski* in developing the concept of the "chilling effect upon the exercise of First Amendment rights," which flows from the threatened enforcement of overbroad laws in the area of free expression, specifically relies upon the opinion of the three-judge district court in *Bush v. New Orleans School Board*, *supra*. See *Dombrowski*, at p. 487.

exercise these liberties may not turn upon the subjective whim of a policeman who will tend to enforce the "social philosophy" of the state, *Bush v. New Orleans School Board, supra*, or as litigation in this Court has so often shown in recent years, upon the opinions of the "politically dominant white community". *NAACP v. Button, supra*. These rights must stand on far firmer ground, for as this Court has reminded us in *Cox v. Louisiana*, "maintenance of the opportunity for free political discussion is a basic tenet of our constitutional democracy". 379 U. S. at 552.

This Court has consistently reiterated the present and immediate dangers which flow from an overbroad statute in the area of the First Amendment which "lends itself to selective enforcement against unpopular causes", *NAACP v. Button, supra* at p. 415.

In his opinion for the Court in *Shuttlesworth v. Birmingham*, 382 U. S. 87 (1965) Mr. Justice Stewart discussed carefully the "constitutional vice" of an overbroad statute:

"It 'does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat' *Cox v. Louisiana*, 379 U. S. 536, 579, (Separate opinion of Mr. Justice Black). Instinct with its ever present potential for arbitrarily suppressing First Amendment liberties, that kind of law bears the hallmark of a police state". 382 U. S. at 90.

Only last Term the Court reemphasized in *Keyishian v. Board of Regents*, 385 U. S. 589, 609 (1967) that

"Where statutes have an overbroad sweep, just as where they are vague, 'the hazard of loss or substantial im-

pairment of those precious rights may be critical,' *Dombrowski v. Pfister*, supra, at 486, 85 S. Ct. at 1120, since those covered by the statute are bound to limit their behavior to that which is unquestionably safe."

And in *Elfbrandt v. Russell*, 384 U. S. 11, 18-19 (1966), the Court once again reminded that

"Legitimate legislative goals 'cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.' *Shelton v. Tucker*, 364 U. S. 479, 488. And see *Louisiana v. N. A. A. C. P.*, 366 U. S. 293, 296-297."

and that

"As we said in *N. A. A. C. P. v. Button*, 371 U. S. 415, 432-433:

"The objectionable quality of . . . overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. . . . These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. . . ."

Only this Term of Court the Court again had the occasion to condemn, in the area of the First Amendment, "an overbreadth that makes possible oppressive or capricious application . . ." *Whitehill v. Elkins*, #25 Oct. Term 1967 (November 6, 1967, 36 LW 4006).

The record below which has so graphically illustrated the vice of unconstitutional overbreadth which results in turning over the protection of fundamental liberties to the subjective predilections of police authorities, also has demonstrated in a striking fashion the evils of selective enforcement which a broad prohibitory statute in the area of free expression permits. *NAACP v. Button*, *supra*.

As Circuit Judge Rives has pointed out in his opinion below, in *Cox v. Louisiana*, "the operative fact that made the statute unconstitutional was the overly-broad reach that allowed city officials to choose which demonstrations would be permitted" (App. 79). Judge Rives' careful analysis of the record below led him to conclude "In the instant case, the same condition prevails" (App. 80). For as Judge Rives points out, without contradiction by the majority:

"A single picket could be viewed as obstructing ingress and egress because for an instant he blocked entrance 'A' or 'B' to the Court House. Such an application of section 2318.5 is no more unlikely than that 10 persons would be so charged when they could only block free and unfettered access to 'A' or 'B' for an instant and leave it unblocked for substantial periods. These arrests were made at a time when not a single person desired access to entrances 'A' or 'B'. What the Supreme Court said in *Cox (I)*, I think, is equally applicable here (379 U. S. at 557-558, 85 S. Ct. at 466)." (App. 80).

This analysis of the record leads Judge Rives to conclude:

"Perhaps the Constitution allows broader power to be vested in public officials where they have showed them-

selves to be 'consistent and just,' with a 'uniformity of method,' 'free from improper' 'considerations' or 'unfair discrimination,' but the record in the present case clearly will not support such a grant. If we are not blinded by the one large group of pickets arrested, but take the entire record, we must see to what great abuse this broad grant of power is subject. This is a case of selective enforcement. While not all pickets were arrested on each occasion, the arrests were frequent enough to have the desired effect. By May 18 this 'nuisance' was eliminated. If there is anything 'consistent' or if any 'uniformity' appears in this record, it is that section 2318.5 was consistently used to harass the civil rights' movement in Hattiesburg" (App. 81).

The record developed at the remand hearing has revealed with stark clarity "the setting in which the statute operates". *NAACP v. Button, supra*. This is a statute "overly broad" in the area of "free expression" which is "susceptible of sweeping and improper application". *Dombrowski v. Pfister, supra*. Attempts to enforce such a statute which stands condemned under the opinions of this Court from *Edwards v. South Carolina*, to *Cox v. Louisiana*, *Keyishian v. Board of Regents* and *Whitehill v. Elkins* in this Term of Court, classically invoke the equitable powers of the federal courts under the first branch of *Dombrowski*. See Point II(a) *supra*. Efforts to enforce such a statute have "a chilling effect upon the exercise of First Amendment rights" and require the protective intervention of a federal court of equity. *Dombrowski v. Pfister, supra*.

- d. The Mississippi statute is being "applied for the purpose of discouraging protected activities" *Dombrowski v. Pfister*, 380 U. S. at 490

As we have demonstrated above the criteria for the invocation of federal injunctive relief under the first branch of *Dombrowski* have been fully met. However, we suggest that the record of the remand hearing also vividly demonstrates that the criteria for equitable relief established in the second branch of the *Dombrowski* analysis equally apply in this case. As we have discussed previously, Point II, 1, *supra*, *Dombrowski* also holds that federal injunctive relief is appropriate where state criminal statutes, possibly valid on their face, are being "applied for the purpose of discouraging protected activities," 380 U. S. at 490. Such proceedings have a "chilling effect upon the exercise of First Amendment rights" and federal equity power is properly invoked. 380 U. S. at 490.

The record of the recent hearing on the remand reveals beyond any possible question that the efforts to enforce the Mississippi statute have been made here without any real expectation of securing valid convictions but rather in an effort to "harass and discourage" citizens from "asserting and attempting to vindicate . . . constitutional rights." 380 U. S. at 482.

A careful reading of the testimony adduced by both the appellants and appellees at the October hearing reveals that there is surprisingly little conflict in the testimony as to the actual facts involved in the State's effort to enforce this statute. As Circuit Judge Coleman remarked at the conclusion of the hearing, "There's not much actual conflict in the testimony. There is a conflict in conclusions but there's not much conflict about what happened" (App.

284). We are in substantial agreement with this analysis of the record. We would suggest that a reading of the relatively uncontested record reveals in a striking fashion that the enforcement of the statute had little or no relationship to any legitimate objectives of the state but had as its sole purpose the discouragement of protected constitutional activities.⁵⁵

- (i) *The record evidence reveals that the enforcement of the statute was not related to actual "obstruction" or "interference", but solely involved efforts to penalize constitutionally protected activities*

The virtually uncontested evidence reveals an extraordinary situation. The actual arrests under the statute had little or nothing to do with any actual "obstruction" or "interference" with public streets or the "egress" or "ingress" to entrance to public buildings. The record indicates that on the occasions of the arrests on April 10th, 11th and May 18th, there was no actual obstruction of egress or ingress or of public streets by the civil rights pickets whatsoever. The record testimony is clear and insistent that there was no such obstruction, that no persons were ever prevented from entering or leaving the courthouse. See Statement of Facts, *supra*, and opinions of Judge Rives (App. 41, 58). See also (App. 114, 119, 120, 131, 132, 141, 142, 155, 159, 160, 161, 169, 170).

The State was simply unable to obtain any evidence whatsoever of any actual obstruction or interference with ingress

⁵⁵ As Mr. Justice Stewart wrote for the Court in *Edwards v. South Carolina*, 372 U. S. at 235, "... it remains our duty in a case such as this to make an independent examination of the whole record." *Blackburn v. Alabama*, 361 U. S. 199; 205 n. 5; *Pennekamp v. Florida*, 328 U. S. 331, 335; *Fiske v. Kansas*, 274 U. S. 380, 385, 386.

or egress on the crucial day of April 10th. On questioning by Judge Rives, Mr. Dukes, the County prosecutor, who was present during the arrests on April 10th (App. 222), testified that no personal complaints were made to him by anyone that they had undertaken to gain access to the courthouse and that access had been blocked (App. 267). More than this, Judge Rives asked Mr. Dukes the following:

"By Judge Rives:

"Did you see anybody who was actually trying to get into the courthouse have their access blocked?" (App. 267)

In answer to this crucial question Mr. Dukes had only one response. The only person he could recollect, and as to that he said, "I can't say positively" (App. 268), was a Mrs. Burkett, whom he told the court, "is one of the proposed witnesses here today [who] attempted to leave her office and go into the courthouse and could not do so." (App. 267). The State relied exclusively on this episode concerning Mrs. Burkett, an official in the Home Demonstration Office, which was near the little garden area around which the pickets walked as the only actual evidence of "obstruction" or "interference" with egress or ingress on the first crucial day of April 10th.⁵⁶

Hundreds of people were present to watch the expected arrests on April 10th. Mr. Dukes himself was present.

⁵⁶ Thus, Mr. Wells on cross-examination of Plaintiff's witness, Rev. Vaux, asked: :

"Didn't [you] know *as a matter of fact* that she tried to come out of her office to go around and go up in the County Agent's office that morning and could not get out?" (App. 155) (Emphasis added.) See also App. 168.

And yet the only evidence that anyone was "obstructed" or "interfered with" in getting into or out of the courthouse which the State could muster up was this story about Mrs. Burkett who, according to counsel for the State, "tried to come out of her office" and "could not get out" (App. 168).

The simple fact of the matter, however, appears to be that Mrs. Burkett did come out of her office that morning and was able to pass through the picket line and get to her destination. This was her own testimony on direct examination for the State (App. 268-270). Her testimony is very clear. She was able to leave her office that morning, she was able to get to her destination in the County Clerk's office, she was not blocked in her office and she did "get out". As a matter of fact, she testified that she passed *through* the picket line by "weaving back and forth" (App. 270), and reached her destination. Circuit Judge Rives has analyzed this testimony carefully in his dissenting opinion (App. 76), and we discuss this episode in some detail, only because it illustrates so vividly the underlying reality that the arrests on April 10th and the days following had nothing whatsoever to do with "obstructing" the entrances to the courthouse. This was purely an afterthought on the part of the State. In fact, there was no actual obstruction whatsoever, as even their own witness on the subject could have told them.

On this type of evidence it is inconceivable that the State, within the meaning of *Dombrowski*, could have had "any hope of ultimate success," or any "expectation of securing valid convictions."⁵⁷ 380 U. S. at 490. With all

⁵⁷ It is significant that convictions for "obstructing" sidewalks or entrances to public buildings will not stand unless the evidence shows "substantial" or "serious" obstruction or interference. See,

the resources of the State available the only evidence of actual or personal obstruction or interference, other than the purely subjective opinions of the prosecutor, Mr. Dukes, and the arresting officer, Deputy Sheriff Morgan (App. 279), was the testimony of Mrs. Burkett, and she testified, contrary to prior inferences in the record by counsel for the State, she was *not* kept in her office, but did succeed in passing through the line and in proceeding to her normal destination. See Statement of Facts, *supra*. Any "obstructions" convictions for violation of the statute based on this testimony would obviously be void as violative of due process under *Thompson v. Louisville*, 362 U. S. 199. See also *Shuttlesworth v. Birmingham*, 382 U. S. 87 (1965).

The fact that the enforcement of the statute had nothing to do with the supposed objectives of the statute, obstruction or interference, *cf.* the finding of the majority below that the "gravamen of the offense" was "blocking" and "interfering" (App. 44) is most dramatically illustrated by the events of the *afternoon* arrests on April 10th (App. 182-183), the arrests the next day (App. 209) and the arrests on May 18th (App. 263-264).

The entire "theory" behind the State's explanation for the sudden enforcement of the statute on Friday, April 10th was that the previous picketing had been relatively "small" and had not obstructed or interfered with ingress or egress to the courthouse, but when the picketing became much "larger" on Friday morning, at that point the State ordered the arrests. The events of Friday afternoon explode this attempted explanation. Throughout its presen-

for example, *People v. Carcel*, 3 N. Y. 2d 327, 144 N. E. 2d 81; *People v. Nixsan*, 248 N. Y. 182, 161 N. E. 463; *cf. Edwards v. South Carolina* and *Cox v. Louisiana*, both *supra*.

tation of the day's events at the remand hearing the State talked solely about the *morning* arrests. See (App. 168). It is understandable why the State sought to avoid the events of that afternoon, the next day, and May 18th. If the theory was that the reason for the arrests in the morning was the large number of demonstrators who walked too closely together, figures varying from 28 to 40 (App. 168), it becomes impossible to understand why Mrs. Williams and nine school children were arrested in the afternoon (App. 182-185), why seven demonstrators were arrested the following day, and why nine were arrested on May 18th.

The reluctance of the State to "remember" the subsequent arrests is quite understandable. It is impossible to justify these arrests in terms of large numbers of people who were now suddenly obstructing the entrances. The only possible inference which can be drawn is that, in truth, both the morning, and subsequent afternoon arrests occurred because the plaintiffs were picketing and the State wanted to stop the picketing. After the afternoon arrests of Mrs. Williams and the nine students it becomes impossible to suggest that the arrests occurred because of an *increase* in the number of demonstrators resulting in obstruction of ingress and egress. This theory of why the statute was enforced could only have been advanced in the absence of the afternoon arrests, the arrests the following morning, and the arrests on May 18th. The actual record restores the situation to its blunt reality. On April 10th the State had decided to use the just enacted statute simply to stop all picketing. "Obstruction" of ingress and egress was a convenient afterthought which now runs afoul of the "forgotten" facts of the subsequent arrests.

The simple fact of the matter is that as in *Edwards v. South Carolina*, "the circumstances in this case reflect an exercise of . . . basic constitutional rights in their most pristine and classic form". 372 U. S. at 235. It is difficult to visualize a more "classic form" of the exercise of First Amendment rights than the conduct which Mississippi seeks to discourage through the application of this statute. Cf. *Dombrowski v. Pfister*, 380 U. S. at 490. We would ask the Court to consider the photographs of the picketing on the morning of April 10th which are part of the record (App. 95, 96, 98). These pictures were taken by the State and originally were part of their case (App. 117). They were taken "a short time, a very short time prior to the arrests" (App. 117). They were introduced by the appellants into the remand hearing "without objection" by the appellees (App. 117). These pictures portray a form of dignified peaceful expression of important social ideas which is at the very heart of the First Amendment. *Edwards v. South Carolina*; *Cox v. Louisiana*; *Brown v. Louisiana*, all *supra*. The words of Mr. Justice Stewart in *Edwards* are directly applicable here. These appellants "felt aggrieved" by laws of Mississippi which "prohibited Negro privileges in this State"—in this case the right to vote guaranteed to them by the Constitution of the United States. They "peaceably assembled" at the place of voter registration, the city courthouse, and "there peaceably expressed their grievances". 372 U. S. at 235. "There was no violence on their part." 372 U. S. at 236. As in *Edwards* this is an exercise of First Amendment rights "in their most pristine and classic form." 372 U. S. at 235. Mississippi, in *Cameron*, no more than South Carolina in *Edwards* may use state power to punish or discourage "petitioners' constitutionally protected rights of free speech, free assembly and freedom to

petition for redress of their grievances" 372 U. S. at 235. If the words of *Dombrowski* have any meaning, they have meaning here. This Mississippi statute is openly being "applied for the purpose of discouraging protected activities" 380 U. S. at 490. Federal injunctive power is required or else "free expression—of transcendent value to all society, and not merely to those exercising their rights—might be the loser." *Dombrowski v. Pfister*, 380 U. S. at 486.

Nothing could be clearer than the simple inescapable fact that these Negro and white citizens were peacefully exercising their fundamental constitutional rights and that the purpose of the passage of the statute and its immediate application to the appellants two days after its enactment was to discourage "protected activities". 380 U. S. at 490. Mr. Justice Fortas' description of the complex of Louisiana cases in which this Court has recently reviewed that State's efforts to utilize its statutes to restrict civil rights activities, in his opinion announcing the judgment of the Court in *Brown v. Louisiana*, is much in point here.

"In each of these cases the demonstration was orderly. In each, the purpose was to protest the denial to Negroes of rights guaranteed them by states and federal constitutions and to petition their governments for redress of grievances. In none was there evidence that the participants planned or intended disorder. In none were there circumstances which might have led to a breach of the peace chargeable to the protesting participants." 383 U. S. at 133.

Here, all the activities of the appellants from January through May were "orderly"; throughout all this activity "the purpose was to protest the denial to Negroes of

rights guaranteed them by state and federal constitutions and to petition their governments for redress of grievances". And as in the Louisiana cases described by Justice Fortas, here also in none of these activities "was there evidence that the participants planned or intended disorder". Cf. *Brown v. Louisiana*, *supra* at 133.

The conclusion impelled by this record is the same drawn by Mr. Justice Fortas in *Brown*:

"The statute was deliberately and purposefully applied solely to terminate the reasonable, orderly and limited exercise of the right to protest the unconstitutional segregation of a public facility. Interference with this right, so exercised, by state action, is intolerable under our Constitution." 383 U. S. at 142.

Here, the statute was applied to "terminate the reasonable, orderly and limited exercise of the right to protest" Negro discrimination in the right to vote prohibited by the Fifteenth Amendment. As in *Brown*, interference with this right is "intolerable under our Constitution." We cannot conceive of a situation more appropriately calling for the exercise of federal equity power under the criteria of the second branch of *Dombrowski*.

- (ii) *The failure of the authorities to warn the demonstrators that they were obstructing the entrances to the courthouse further indicates that "obstruction" was not the reason for the arrests, but rather the "discouraging of protected activities". Dombrowski v. Pfister*

One of the clearest indications throughout the entire hearing that the enforcement of the statute really had very little to do with the problem of "obstruction" or "interference" was the fact that the arresting authorities, Mr. Dukes, Sheriff Gray, or his deputies, never really attempted to explain to the demonstrators that they were "obstructing any entrances" and never warned them of such obstructions (App. 123, 124, 132, 163, 177, 178, 182, 200, 201, 221). No one on April 10th received any complaints from the police that they were blocking the entrances (App. 123, 124, 221). This emerges very clearly throughout the record. For example, see the following colloquy between the Court and appellants' witness, Reverend Mehl:

"Judge Rives: Were you warned to disperse or what warning was given to you before you were arrested?

"The Witness: There was no warning given sir.

"Judge Rives: Describe the circumstances of the actual arrest?

"The Witness: Well, as we were walking around the court yard I guess you would call it in a very quiet and orderly fashion Mr. Gray came over and split the picket line and said to those who were on his left follow me.

"Judge Rives: Had he told you before that that you were obstructing the entrance to the courthouse or interfering in any way with the passage of people?

"The Witness: No, he hadn't and then the picket line followed him when he said follow me we began to follow him and he took us immediately into the jail which is behind the courthouse"⁵⁸ (App. 163).

⁵⁸ See the discussion with appellants' witness Rev. Vaux, who was recalled by the court:

"Judge Rives: Reverend Vaux, I would like to ask you just one or two questions concerning the morning of the arrests. Will you tell us the circumstances just preceding the arrest what warning was given, if any, and what how you were directed, what the circumstances were, how many times you had gone around the little quadrangle or circle whatever it is and what warning was given and all the circumstances as far as you can.

"The Witness: How far back shall I go sir?

"Judge Rives: Just the morning of the arrest.

"Judge Cox: Immediately preceding the arrest.

"Judge Rives: Immediately preceding the arrest.

"The Witness: Could I start on the picket line or should I back up further.

"Judge Rives: Were you given any warning before you got on the picket line?

"The Witness: Oh no.

"Judge Rives: Just start.

"The Witness: On the picket line walking single file and we marched around two full cycles and saying that I would be the front of the line another half cycle or three-quarters of a cycle to the side of the court house and at that time the arrest there was a wall of men and the direction was to just walk around into the jail. I really don't recall any specific comments, they didn't say that we were arrested or . . .

"Judge Rives: Well, preceding that did Sheriff Gray or anyone else warn you against obstructing entrances to the court house or unreasonably interfering with traffic or anything of that kind?

"The Witness: Not that morning.

"Judge Rives: The afternoon before I understand the statute had been read or were you present?

"The Witness: I wasn't present in the group but it was read, yes sir.

"Judge Rives: But that morning you say no warning was given except direction after you walked around twice?

Adequate warnings by the arresting officers that the conduct complained of does in fact "obstruct" or "interfere" may well be a prerequisite to the constitutional sustaining of a conviction under such statutes, see for example *Cox v. Louisiana, supra*, at p. 570.

As Mr. Justice Black remarked in *Feiner v. New York*, 340 U. S. 315, 327, "at least where time allows, courtesy and explanation of commands are basic elements of good official conduct in a democratic society". And, as Mr. Justice Brennan commented in his concurring opinion in *Brown v. Louisiana*, 383 U. S. at 148, "petitioners might have reasonably believed that they were being rejected only because they were Negroes seeking to exercise their constitutional rights".

Here, the total lack of any meaningful warnings demonstrates the lack of concern on the part of the arresting officers with whether the conduct really obstructed anyone at all. As a matter of fact there was hardly enough time at all for the officers to observe whether the picketing Friday morning on April 10th would actually have interfered with anyone. The actual picketing apparently occurred for only five to ten minutes before it was totally prohibited (App. 124-5). There was barely enough time for

"The Witness: That's right, no warning was given to me.

"Judge Rives: Just what was said to you at the time you were directed to go a different direction?

"The Witness: I don't recall any of the words. There were several men there and I don't recall any verbal words at all, it was just a direction and I asked one of the officials what is the charge they said I wouldn't want to repeat the statement they said about it you will find out later" (App. 177-178).

See also the testimony of plaintiff's witness Mrs. Connor at App. 221.

the pickets to make more than two circles around the little garden area (App. 123-4). The absence of any adequate warning that the conduct obstructed ingress or egress thus highlights the fact that the arresting officers were concerned that morning not with correcting "obstruction" but *with stopping all picketing.*

Again the uncontradicted testimony of Mrs. Williams in respect to the afternoon picketing undercuts even the tentative suggestion of Mr. Dukes that the Sheriff gave some sort of warning about "obstruction" in the morning (App. 250-251). The State made no effort to contradict Mrs. Williams's testimony that when she and the nine students were arrested the "warning" they received was "he told us you march so well this way now march that way and we marched the way he told us and we marched on to the Forrest County Court House jailhouse" (App. 182).

(iii) *The record further shows that the state authorities had in practice sanctioned the type of activity for which appellants were then arrested*

One of the most unusual aspects of the record testimony was the revelation that the actual area in which the civil rights demonstrators marched had been designated by the city authorities as an area in which they were permitted to march (App. 114, 128, 197, 224, 245-6, 248). Until the day of the arrests the actual area of picketing around the small garden area to the side of the courthouse had been marked off by the authorities with barricades as the *only permissible* place to march (App. 114-5, 245-6). Mr. Dukes himself testified that the barricades set up by the police designated an area in which people could picket which would "not block" the main entrance to the courthouse:

"By Mr. Wells:

Q. Well, now after these big marches and this great group was any effort made to set up some barricades and outline a place where they could picket? A. It was absolutely necessary, Mr. Wells, because the manner in which they originally picketed or marched completely blocked the front entrance of the court house and being in January and tax paying time we had to make some arrangements for our people to get to the court house so barricades were set up on the north and south side of the Main sidewalk into the court house blocking that area off so that it would not block the main entrance into the court house and in some areas a rope was attached to a portion of the barricade whereby we more or less prohibited the general public from going into this area and these people allowed to picket unmolested within that given area."

The picture which emerges from the testimony is very clear. When the major demonstrations of January developed the Hattiesburg police decided to limit the areas available to the demonstrators to a small area on the side of the courthouse which did not obstruct the main entrances (App. 246). Picketing here was perfectly permissible (App. 246). However, the authorities finally decided that even this limited picketing which they themselves had sanctioned was not to be tolerated. The plaintiffs were then arrested for "obstructing" in the very area which they had been told was the *only* area they could picket in. This conduct on the part of the authorities, in the words of this Court in *Cox v. Louisiana*, is "an indefensible sort of entrapment by the State—convicting a citizen for exercising a privilege which the State had clearly told him was

available to him." 379 U. S. at p. 571. Any convictions under these circumstances would obviously fall under the rule of *Cox v. Louisiana*.⁵⁹ As the Court there said, "The Due Process clause does not permit convictions to be obtained under such circumstances." 379 U. S. at 571. The rule of *Cox* applies here with even greater force. It would be a travesty on the most elementary concepts of fairness to permit convictions to stand for demonstrating in the very area the city *itself* had designated as permissible as not obstructing the entrance to the courthouse. Such convictions would never stand under *Cox*. Such prosecutions are not pressed with any "real expectation of ultimate success." *Dombrowski v. Pfister, supra*, at 490. They are obviously not pressed to alleviate any legitimate concern with "obstructing" ingress or egress to public buildings. Otherwise, the demonstrators would never have been told previously that they could demonstrate in that confined area. Moreover, it may be asked why the authorities took down the barricades just before the arrests if the presence of the barricades had *facilitated* ingress and egress to the building. Cf. testimony of Mr. Dukes (App. 246). The answer is simple. The purpose of the arrests was not to cure a non-existent "obstruction" to egress or ingress. It was to discourage the appellants from any picketing at all. Such action is "intolerable under our Constitution". *Brown v. Louisiana, supra*, at p. 142.

⁵⁹ The facts in *Cox* in respect to the third branch of convictions there involved, the courthouse arrests, are almost identical to those of the April 10th arrests. In effect the Court says in *Cox*, the appellants had been told by the City that it was permissible to demonstrate where they were. See 379 U. S. at 571.

- (iv) *The enforcement of the Mississippi statute had a "chilling effect upon the exercise of fundamental constitutional rights," requiring the invocation of federal injunctive relief under the criteria of Dombrowski*

The record of the remand hearing graphically illustrates the "chilling effect" upon the exercise of fundamental constitutional rights which results from planned prosecutorial misuse of state criminal statutes for the purpose of discouraging protected activities. Cf. *Dombrowski v. Pfister*, *supra*, at 490; *Cameron v. Johnson*, *supra*, at 755 (dissenting opinion of Mr. Justice White, and *Cameron v. Johnson*, *supra* at 748 (dissenting opinion of Mr. Justice Black).

The record reveals clearly and without contradiction the objectives of the picketing conducted from January 1964 through May in Hattiesburg. Reverend Brown, one of appellant's witnesses, placed the objective in these terms:

"A. Well, the reason of the picketing 'as far as I understood was to assist the Negro people in several ways, one of which was to give to the Negro community a source of strength and confidence that there were people who cared about their movement and their desire to register, that perhaps our being there might be possibly a deterrent to any violence that might accrue, that also the picket line as I understood it would also be a word to the community at large concerning the state of unrest in the Negro community concerning this right and others that all was not well in the Negro community" (App. 112-113).

Reverend Vaux another witness for appellants placed the purpose of the picketing this way:

"The purpose of the picket line was to lend moral support and visible support to our voter registration program" (App. 141).⁶⁰

The intimate relationship between the picketing and the voter registration activities was described clearly by Reverend Cameron, one of the leaders of Hattiesburg Negro voter registration movement:

"The purpose of the picketing was to lend faith and encouragement to the local Negro community because of the fear and so many of the citizens in the Negro community felt that without some help that they would not be able to go to the registrar's office to register to vote and with many testimonies from them that after they were able to see white ministers and laymen on the picket line" (App. 191).

The impact of the enforcement of the Mississippi statute upon both the exercise of these First Amendment and Fifteenth Amendment rights was extremely serious. The picketing dwindled down to handfuls of people until the middle of May when a second series of arrests cut it off completely (App. 222, 227, 228-9, 204, 205, 206, 235). Registration to vote efforts likewise palled (App. 204, 205, 235).

There can be no question that the picketing, regarded as serious and important to the voter registration drive, ended abruptly as a result of the enforcement of the statute. It was suggested by the State at the hearing, however, that another reason for the termination of the picketing might be found in a "spurt" in voter registration activity in May of 1964, resulting in a "new" situation in Forrest

⁶⁰ See also App. 155, 159, 165, 185, 187, 188, 190, 191, 192.

County. *Cf.* (App. 211-218): In fact the State intimated at one point that the present figure (as of the date of the hearing) of some 3000 Negro registered voters in Forrest County illustrates the absence of a "chilling effect" upon the exercise of constitutional rights after the enforcement of the statute. This inference totally misrepresents the actual situation in Forrest County for many months after the initial enforcement of the state statute. No "spurt" in voter registration occurred in May of 1964.

As late as June of 1965 the Court of Appeals for the Fifth Circuit found it necessary to grant extraordinary relief to alleviate the disenfranchisement of Negro citizens in Forrest County. *United States v. Lynd*, 349 F. 2d 785 (5 Cir., 1965) and *United States v. Lynd*, 349 F. 2d 790 (5 Cir., 1965). In the latter opinion, the Registrar of the County, Mr. Lynd, was held in contempt of the Circuit. The voting situation in Forrest County was described in June, 1965 in this manner: "Negroes have been denied this precious Constitutional right because they are Negroes." In addition, the Court pointed out that "the denial of these rights—at one and the same time a violation of the Constitution and orders of this Court—demands a correction." And the Court said in June, 1965, "At the snail's pace to date, it will take decades to eradicate the evil." 349 F. 2d at 793.

⑥ The "chilling effect" of the groundless prosecutions initiated by the State under House Bill 546 continues. If it has worn off at all, it is only because of the corrective effect of the federal stay of prosecutions which has continually been in effect since the institution of this case, together with the action of the Fifth Circuit in *Lynd* and the passage of the 1965 Voting Rights Act. If this Court should

now decline to continue the stay of these proceedings and the future enforcement of the statute, the "chilling effect" will undoubtedly intensify once again. First Amendment liberties must be protected whether or not the National Government has independently taken steps to help to eradicate the great and old evils which the exercise of First Amendment rights in this situation were designed to achieve. The objectives of Congress in passing the Voting Act of 1965 as well as the purpose of the Court of Appeals in imposing its contempt order against the Registrar of Forrest County require for their full success the active participation of the Negro citizens of the State in the electoral and registration processes. See, Report, United States Commission on Civil Rights, The Voting Rights Act, 1965. This in turn calls for the full and free exercise of fundamental First Amendment rights by the Negro citizens of the State. A statute, the enforcement of which casts a chilling effect upon the exercise of these liberties, cannot be tolerated.

The lower court majority, in December of 1966, advanced an extraordinary reason for "declining injunctive or declaratory relief in this case" (App. 49). Conceding that the picketing by appellants was "for the purpose of obtaining the right to vote and to encourage others to do so" (App. 49) the lower court concludes that because of the passage of the Voting Rights Act of 1965, and the decision of this Court in *South Carolina v. Katzenbach*, 383 U. S. 301 (1966) upholding its validity "picketing to obtain the vote or to encourage others to do so is a thing of the past" (App. 50).

This conclusion which in effect would deny appellants federal protection under the mandate of this Court in

Dombrowski on a theory that the objectives the appellants sought to achieve through the exercise of their constitutional rights have in fact already been fully achieved, not only flies in the face of the realities of present day Mississippi. See, for example, United States Commission on Civil Rights, Hearings on Voting, Jackson, Mississippi, 1965. It wholly ignores the nature of the ancient evil which the institution of Negro slavery first planted in this country three hundred years ago. As this Court recently pointed out in *South Carolina v. Katzenbach*, *supra*, the very case the lower court relies upon, discrimination against Negro citizens in voting is "an insidious and pervasive evil which had been perpetrated in certain parts of our country through unremitting and ingenious defiance of the Constitution." 382 U. S. at 309. (Opinion of the Chief Justice for the Court.) Accordingly, the Court went on to point out that Congress concluded there was a necessity for "sterner and more elaborate measures in order to satisfy the clear commands of the Fifteenth Amendment" 387 U. S. at 309.

But this "insidious and pervasive evil" will not be eliminated overnight solely by the intervention of national legislation. The full and uninhibited participation of Negro citizens in every aspect of the political processes will be required if the hope expressed by this Court in *South Carolina v. Katzenbach* is to be achieved—that "we may finally look forward to the day when truly the 'right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude'" 383 U. S. at 337. This objective, as the United States Commission on Civil Rights has pointed out, can be achieved

only through a process of self-organization and activity on the part of the Negro citizens themselves, rather than reliance upon the new legislation by itself.

Thus the Commission wrote in its first major report *after* the passage of the Voting Rights Act:

"The registration of Negro citizens has been prevented or deterred by a number of factors.

Racial violence related to civil rights activities is another factor which has limited applications in some counties with examiners: The killing of seminarian Jonathan Daniels in Lowndes County, Alabama, on August 20 and the acquittal of his killer on September 30 appear to have been the single most important factor in reducing Negro applicants in that county. It is symbolic of conditions there that a pick-up truck with a rifle visibly displayed has been parked daily immediately outside the examiner's office since the opening of the office. Registration workers in the county have reported increasing threats against their lives and continued efforts to intimidate resident Negro leaders.

The decline in registration following the initial outpouring of applicants also is attributable to lack of political organization and low motivation. Negroes, who for generations have played no part in the political processes of their communities, cannot be expected suddenly to embrace all of the responsibilities of citizenship. Registration drives have been effective in some places. Negroes have been persuaded to attend meetings where registration and voting procedures are explained, and to present themselves for registration,

even at the risk of incurring possible disapproval by the white community and by their employers. *But while these drives have had a substantial effect, the inhibiting results of mass disfranchisement are not easily overcome. Continued community and governmental activity is necessary so that Negro citizens will learn that the ballot is now available to them.* (Emphasis added.) United States Commission on Civil Rights, "The Voting Rights Act".

This then is the short answer to the unusual suggestion of the lower court that injunctive relief should be denied to these appellants because in some magic way the "insidious and pervasive evil" of Mississippi's one hundred year old "unremitting and ingenious defiance of the Constitution", has now been suddenly eliminated by Act of Congress. For as the Commission states, unfortunately "the inhibiting results of mass disfranchisement are not easily overcome". *The Voting Rights Act, supra.* "Racial violence", "intimidation", "disapproval by the white community and their employers" *cf.* the Commission's Report, *supra*, are still unhappily part of "today's problems" *United States v. Price, supra.* Thus "continued community and governmental activity is necessary so that Negro citizens will learn that the ballot is now available to them" Report, *supra.* The free and unfettered utilization of the fundamental liberties of the First Amendment remains critically necessary to the Negro citizens of Mississippi if the objectives of the Congress expressed in the 1965 Act are to be fulfilled. State legislation which is selectively enforced against Negro citizens for the purpose of discouraging this free exercise of basic freedoms, necessary if the Congressional purpose is to be achieved, violates the spirit

and letter of the 1965 Act itself. See opinion of Circuit Judge Rives below (App. 77). The injunctive relief here sought remains pressingly necessary.⁶¹

The record in this case now brings before the Court a classic situation for the invocation of the criteria for injunctive relief set forth in the second branch of the *Dombrowski* analysis. The Mississippi statute is being applied "for the purpose of discouraging protected activities", 380 U. S. at 490. The arrests and prosecutions are part of an "unconstitutional scheme—to harass and discourage" citizens of Mississippi from "asserting and attempting to vindicate . . . constitutional rights", 380 U. S. at 482. The statute is concededly and openly selectively enforced only

⁶¹ The suggestion of the majority below that any necessity for the free exercise by Mississippi citizens of fundamental constitutional rights in order to guarantee full compliance with the Fifteenth Amendment and the Voting Act of 1965 is "a thing of the past" is of course unsupported by the record or by what this Court knows concerning the realities of present day life in that state. Cf. for example, the comments of the District Judge in *United States v. Price*, on remand from this Court's decision in *United States v. Price*, *supra*, in revoking the bail of certain convicted defendants in that proceeding. See New York Times, Oct. 21st, 1967. See also New York Times, Nov. 21, 1967, p. 95, article from Jackson, Mississippi: "The weekend bombing of a church leader's home prompted the City today to form a 'bomb squad' of specially trained officers . . . The bombing was the second in this area in five days. Last Wednesday the parsonage of a Negro minister, the Rev. Allen Johnson of Laurel, was severely damaged by an early morning blast. Mr. Johnson is head of a voter project of the National Association for the Advancement of Colored People." See also, New York Times, Nov. 23rd, 1967, article from Jackson, Mississippi, p. 50: "Rabbi Perry E. Nussbaum said today he believed the bombing of his home last night had been a direct attempt on his life. He also asserted that apathy by the general public had helped create the current 'reign of terror' in Mississippi. Rabbi Nussbaum and his wife narrowly escaped injury in the explosion that shattered his three-bedroom home shortly after 11 p.m. It was the fifth bombing in the state within the last two months and the fourth in the

against citizens who seek to exercise fundamental federal rights to achieve objectives of freedom and equality for Negro citizens in the political life of the country guaranteed to them under the Constitution. The Mississippi authorities utilizing a statute which "bears the hallmark of a police state", 382 U. S. at 90, have entrapped citizens into conduct they now seek to penalize. This "planned prosecutorial activity", 381 U. S. at 755, is not pressed with any "real expectation of ultimate success", 380 U. S. at 490, but merely for "the purpose of discouraging protected activity", 380 U. S. at 490. In short these state officials are "engaging in unlawful conduct which deprives persons of their federally guaranteed statutory or constitutional rights". 381 U. S. at 749. Under any analysis of the criteria established for injunctive relief under the second branch of *Dombrowski*, federal equity power is proper and necessary here.

Jackson area. Investigators speculated that the series of bombings had been executed by a secret band of terrorists, possibly in retaliation against the recent arrests and trials of Ku Klux Klansmen on civil rights charges In New York, the Union of American Hebrew Congregations sent a telegram to Federal officials asking them to take firm action to end the 'reign of violence, terror and intimidation in Mississippi', at p. 50. In any event if in the future injunctive relief presently granted requires modification, as this Court pointed out in *Dombrowski*, "The settled rule of our cases is that district courts retain power to modify injunctions in light of changed circumstances. *System Federation v. Wright*, 364 U. S. 642; *Chrysler Corp. v. United States*, 316 U. S. 556; *United States v. Swift & Co.*, 286 U. S. 106", 380 U. S. at 492.

CONCLUSION

The judgment below should be reversed with directions to the three-judge statutory Court to issue the federal injunctive relief prayed for restraining the enforcement of House Bill No. 546 of the Laws of Mississippi of 1964 and the criminal proceedings presently pending brought under the authority of that statute.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 699

REVEREND JOHN EARL CAMERON, ET AL.,
Appellants,

VS.

PAUL B. JOHNSON, JR., ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR APPELLEES

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BRIEF FOR APPELLEES

STATEMENT

Appellants' statement of the case is sufficiently inclusive as not to warrant a further statement in this brief. Appellants' Statement of Facts is generally correct with some exceptions:

The statement that the pickets never blocked anyone from passing them was disputed by the witness Dukes and the witness Bowling.

Appellants' statement on page 11 of his brief as to what transpired on April 9, 1964, is at variance with the testimony of witness Dukes and, therefore, was an issue of fact to be decided by the district court. Otherwise, appellants' statement of the facts is generally correct.

QUESTIONS BEFORE THE COURT

1. Whether 28 U.S.C. 2283 bars a Federal Injunction in this case.
2. If 2283 is not a bar, whether relief is proper in light of the criteria set forth in *Dombrowski v. Pfister*, 380 U.S. 479.

POINT I.

This suit is before the Court on the Amended Complaint filed on or about June 1, 1964. The named Appellants are Reverend John Earl Cameron and Mrs. Victoria Jackson Gray. They seek to bring this suit as a class action. Appellants contend that Title 42, U.S.C. 1971 and 1983 are within the exceptions contained in Title 28, U.S.C. 2283.

We first turn our attention to Section 1971 which has to do in its entirety with the right to vote (which includes the right to register to vote).

Throughout the entire record made in this case, it is conceded by Appellants that the main purpose of the demonstrations and picketing near the courthouse in Hattiesburg was to encourage Negroes to register to vote. This activity was described by the Appellant Cameron and the other witnesses who testified after a voter registration

drive. Although the Amended Complaint alleges in Paragraph 12 that the Defendants have threatened and continued to threaten the enforcement of the statute herein attacked, there is not one scintilla of evidence that Mrs. Gray has ever been arrested, as in fact she has not, or even been threatened or ever took part in the demonstrations or picketing. Therefore, Reverend John Earl Cameron becomes the only named Appellant purportedly representing the class.

The record further shows that the Reverend Cameron became a registered voter several years before this activity started and in fact was a candidate for office during the time the picketing was in progress. Appellants apparently base their claim under 1971 (b) which provides that no person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce any other person for the purpose of interfering with the right of such other person to vote, etc. There is no proof in this record of any attempt to violate this Section so far as it pertains to Reverend Cameron. Therefore, he is without capacity to bring a class action in this regard; nor is he entitled to any relief under this Section. In fact, the preventive relief prescribed by Section 1971 which is contained in subparagraph (c) of that Section is delegated to the Attorney General of the United States.

Thus, it would seem that it is not necessary for this Court to determine whether 42 U.S.C. 1971 is within the exception contained in 28 U.S.C. 2283 because Reverend Cameron is not a member of the class he seeks to represent so far as that Section is concerned.

Appellants claim that the Fifth Circuit in the case of the *United States v. Wood*, 295 F.2d 772, has determined

that Section 1971 is an exception to 2283. We do not agree. The Wood case simply held that 2283 did not apply to the United States under the Leiter Minerals Case. While it is true that Judge Rives, writing for the Court, touched on this question, he did so from the standpoint that the suit was brought by the United States under an obligation charged to it by the Civil Rights Act for the protection of constitutional rights in which there is the highest public interest. The Wood Case in no sense is analogous to the Cameron Case. In Wood an assault was made on Hardy in the Registrar's Office by the Registrar himself and in the presence of two (2) Negroes who had been brought to his office by Hardy and were in the process of filling out applications to register. They were frightened to the extent that they ran out of the office before they had finished and at the time the suit was heard no other Negro had been back to the office in an attempt to register. Further, it was clear beyond any peradventure of doubt that the criminal charges brought against Hardy were completely and wholly fictitious and without merit.

We now turn to 42 U.S.C. 1983.

We have been unable to find any case wherein a prosecution of a criminal case in a State Court has been enjoined under the theory that 1983 is an exception contained in 2283. The most exhaustive discussion of this question which we have found is contained in the case of *Baines v. City of Danville*, 337 F.2d 579. The Fourth Circuit, in its Opinion decided August 10, 1964, under the general heading in the Opinion "Refusal to Stay Criminal Proceedings in the State Courts," found on pages 586 through 596, discusses every case bearing on the subject to the date of that decision. We disagree with Appellants that *Dombrowski*, in any way, is in conflict with the decision in *Baines v. City of Danville*. We know of no case in

conflict with this opinion. In fact, in the case of *Dilworth v. Riner*, 343 F.2d 226, the Fifth Circuit in holding that Section 2283 was not an impediment to the enjoining of a criminal prosecution because of the specific right created under the public accommodation section of the Civil Rights Act of 1964 called specific attention to the Baines Case and used this very significant language:

"[14] Neither *Poole v. Barnett*, 5 Cir., 1964, 336 F.2d 267, or *Baines v. City of Danville*, 4 Cir., 1964, 337 F.2d 579, is contrary to the conclusions we have reached. The *Poole* case did not involve unlawful action on the part of the state officers under the federal law as it existed at that time, the opposite of the case here. *Baines* involved 42 U.S.C.A., § 1983, a part of the Civil Rights Act of 1871, which merely confers a broad and general grant of equity jurisdiction. That Act, unlike § 203(c) of the 1964 Act, created no right of the type here involved, the right to be free from punishment for peacefully claiming the right to equal public accommodation, the existence of which right is no longer open to conjecture. *Hamm v. City of Rock Hill*, supra."

Are Appellants Entitled to Relief in the Light of the Criteria Set Forth in *Dombrowski*

The situation here is in no way analogous to the situation in *Dombrowski*. In *Dombrowski* a suit was filed seeking declaratory relief and injunction restraining the defendant from prosecuting or threatening to prosecute Plaintiffs under several statutes of Louisiana. At the time this suit was filed there were no criminal prosecutions in the State Courts. The suit attacked the statutes on their face because of over-breadth and charged that the threats to enforce these statutes were not made with any expectation of securing valid conviction but were part of a plan to employ arrests, seizures and threats of prosecution to harass Plaintiffs and discourage them and their supporters from asserting and attempting to vindicate rights of Negro

citizens of Louisiana. A Three-Judge District Court was convened and the case dismissed for failure to state a claim on which relief could be granted. The case was submitted on Plaintiffs' allegations and offers of proof and motion to dismiss, the Court feeling that this was an appropriate case for abstention. Prior to the filing of this suit in Federal Court, Dombrowski and others were arrested and charged with violations of two (2) statutes. Their offices were raided and their files and records were seized. Later in October a State Judge quashed the arrest warrant and discharged the Plaintiffs. Subsequently, the Court granted a Motion to Suppress the seized evidence on the grounds that the raid was illegal. In the face of this, Louisiana Officers continued to threaten prosecution of Plaintiffs who filed the suit in Federal Court. After the Three-Judge Court was convened a Grand Jury was summoned to hear evidence looking to indictments of Plaintiffs. On Plaintiffs' application Judge Wisdom, a member of the Three-Judge Court, issued a Temporary Restraining Order against prosecution pending a hearing and decision of the case in the District Court. Following the hearing the Temporary Injunction was dissolved and an Order of Dismissal was entered and thereafter the Grand Jury returned indictments under two (2) statutes against the Plaintiffs. On appeal to the Supreme Court, the Court held that the District Court should not have abstained. It further held that 2283 did not preclude injunctions against institution of State Court proceedings but only bars stays of suits already instituted. In addition, the Supreme Court held the two (2) statutes involved as being unconstitutional on their face. The Court used this very significant language:

"In considering whether injunctive relief should be granted, a federal district court should consider the statute as of the time its jurisdiction is invoked, rather

than some hypothetical future date. The area of proscribed conduct will be adequately defined and the deterrent effect of the statute contained within constitutional limits only by authoritative constructions sufficiently illuminating the contours of an otherwise vague prohibition. As we observed in *Baggett v. Bullitt*, supra, 377 U.S. at 378, 12 L. ed. 2d at 389, this cannot be satisfactorily done through a series of criminal prosecutions, dealing as they inevitably must with only a narrow portion of the prohibition at any one time, and not contributing materially to articulation of the statutory standard. We believe that those affected by the statute are entitled to be free of the burdens of defending prosecutions, however expeditious, aimed at hammering out the structure of the statute piecemeal, with no likelihood of obviating similar uncertainty for others." (14 L. Ed. 2d at page 31)

The Court's attention is called to the footnote of the Dissenting Opinions of Justices Harlan and Clark on page 35 to this effect: "If the State criminal prosecution were instituted first, a Federal Court could not enjoin the State action," citing 28 U.S.C. 2283.

The aspects of this case are in no way similar to the situation in *Dombrowski*. Only one statute is involved and there seem to be no common questions of law in the two cases.

Should this Court feel that 28 U.S.C. 2283 is not a bar to a Federal injunction then the two questions that should be decided are, first, is the statute here under attack unconstitutional on its face and if not, is it being or has it been unconstitutionally applied to Appellants.

On the question of the constitutionality of this statute on its face we do not feel that anything, helpful to the Court, could be added to the Dissenting Opinion of Mr. Justice Black, Mr. Justice Harlan and Mr. Justice Stewart plus the Dissenting Opinion of Mr. Justice White.

Therefore, we now come to the question of the unconstitutional application of this statute. The thrust of Appellants' claim is that the enforcement of this statute was for the purpose of, and had the effect of, intimidating and discouraging Negroes from registering to vote in Forrest County, Mississippi. They frankly admit that the main purpose of their demonstrations and picketing was to support a voter registration drive. They claim that the arrests made were solely for the purpose of discouraging that effort and claimed that unless an injunction were issued against the prosecution of these cases Negroes would cease trying to register. The record shows that these demonstrations started in January, 1964 and continued almost daily up until April 10, 1964. Prior to the passage of the statute here under attack, the officers in Hattiesburg could do little to prevent obstruction to the entrance to the courthouse. They first sought to prescribe an area for this picketing and fortunately the Plaintiffs here, confined their picketing to those areas. Even then the area of march was near two (2) entrances to the courthouse. Mr. James Dukes, County Attorney, testified that since January 21, 1964 the officers had had complaints constantly (Tr. 312) (App. 267). Mr. Selby Bowling, President of the Board of Supervisors of Forrest County, testified that the picket line was a nuisance so far as people trying to get in or out of the courthouse (Tr. 328, 329) (App. 276, 277). Mr. Dukes further testified that on April 9 after the statute herein attacked was passed that the Sheriff, in company with the District Attorney, County Attorney and Deputy Sheriff, went out to where these people were picketing and read the statute to them stating that they had been picketing in such manner as to obstruct and interfere with the entrance to the courthouse and stated to them that he did not want to have to arrest anyone but if they continued to picket in the manner

that they had been he would be forced to arrest them. He further told them that they could continue to picket so long as they did not do it so close together and in such numbers to block the entrances and sidewalks (Tr. 276, 277) (App. 247, 248). That night Appellants had a meeting, discussed the new statute and according to their own admission decided to go to the courthouse in a large body and even prepared a written statement for the Press. Apparently they intended to make a test of this statute because it is quite evident that they expected to be arrested. The pictures introduced show in unmistakable terms the size of the crowd and the closeness with which they were marching. The evidence is in dispute concerning the arrest but both the Deputy Sheriff Morgan and Mr. Dukes testified that Sheriff Gray warned them that they could not continue in such a large group and in such manner and gave them ample time to either disperse or rearrange their picket line before they were arrested.

Appellants claim that this arrest was made for the sole purpose of preventing their continuing a picket line and to discourage Negroes from registering. Yet we find that between April 11 and May 18 they continued to picket in small groups and in such manner as not to obstruct or unreasonably interfere with entrances and exits and were not molested in any way by the officers. On May 18 another large group appeared, apparently to force some action by the officers, and they were arrested. If these arrests were made by the officers to stop picketing and in effect stop this registration drive, it is strikingly strange that no effort was made to stop them from April 11 to May 18, a period of thirty-eight (38) days.

Did these arrests have the chilling effect of discouraging Negroes from registering to vote? We find from the record, and it is undisputed, that the registration of Ne-

groes in Forrest County actually increased rather than decreased after May 18. Appellant Cameron himself testified that since May, 1964 more Negroes had registered to vote in Forrest County than had registered for two (2) or three (3) years prior to that time (Tr. 204) (App. 211). He was asked this question: "Since May 18 when this last arrest was made more Negroes have registered in Forrest County from that time until now than had been registered prior to that day. Isn't that correct?" His answer was, "That's correct; more Negroes were." He was then asked the question: "The rate of registration has picked up since that time. Hasn't it?" His answer was, "That's true." Mrs. Peggy Jean Connor was asked this question: "As a matter of fact the registration in Forrest County among Negroes has picked up and increased since April of 1964 rather than decreased; hasn't it?" Her answer was "Yes." (Tr. 247) (App. 232). We find therefore that these arrests did not have the effect that Appellants claimed they would have when this suit was filed.

This Court is not faced with trying to determine whether all of these people are guilty of a violation of this statute beyond every reasonable doubt. That is for a State Court to determine if and when they are tried on separate affidavits. What this Court should look to and determine is whether or not there is sufficient evidence in this record to justify a determination that these people were arrested and charged with a violation of the statute for the sole purpose of thwarting the registration drive and discourage Negroes from registering to vote. If these charges were made in good faith and there is no allegation here that they cannot get a fair trial in State Court and these arrests have not resulted in discouraging Negroes from registering to vote, the Appellants have wholly failed to sustain their claim of an unconstitutional application of

this statute. They therefore are not entitled to any relief in the proper light of the criteria set forth in *Dombrowski*.

We see no merit in the contention of the Counsel for Appellants that because these criminal cases were removed to Federal Court, *at the instance of Appellants*, they no longer constitute pending cases in State Courts (*Italics ours*).

We further see no merit in the argument of Counsel that because this statute has been amended by writing into it the word "unreasonable" prior to "interfering" that it becomes more vague and over-reaching. Actually, the statute has become more narrowly drawn.

Counsel further contends that certain entrances to the courthouse were not obstructed and that, therefore, the statute should not be enforced because of an unreasonable interference or obstruction of other entrances. That is tantamount to saying that if these people had only blocked the front entrances the public should be required to use the back entrance without complaining. This, of course, is completely unreasonable.

Appellants lay great stress on the fact that subsequent to the enactment of Section 2318.5 of Mississippi Code of 1942, the statute here under attack, several parades were permitted on the public streets of Hattiesburg, some of which run in front of the courthouse, and no arrests were made. They claim that this is selective enforcement of this statute. Of course, these parades were held on the public streets, not on the walkways within the courthouse grounds, leading to the entrances to the courthouse. Complete answer to this argument was made in the majority opinion of the district court, written by Judge Coleman, Circuit Judge.

SUPREME COURT OF THE UNITED STATES

No. 699.—OCTOBER TERM, 1967.

John Earl Cameron et al.,	} On Appeal from the United
Appellants,	
v.	
Paul Johnson, etc., et al.	States District Court for the Southern District of Mississippi.

[April 22, 1968.]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellants brought this action for declaratory and injunctive relief in the District Court for the Southern District of Mississippi. They sought a judgment declaring that the Mississippi Anti-Picketing Law ¹ is an overly broad and vague regulation of expression, and therefore void on its face. They also sought a permanent injunction restraining appellees—the Governor and other Mississippi officials—from enforcing the statute in pending or future criminal prosecutions or otherwise, alleging that

¹ The statute as amended is codified as 2A Miss. Code Ann. § 2318.5 (Supp. 1966), and in pertinent part provides:

“1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from any public premises, State property, county or municipal courthouses, city halls, office buildings, jails, or other public buildings or property owned by the State of Mississippi, or any county or municipal government located therein; or with the transaction of public business or administration of justice therein or thereon conducted or so as to obstruct or unreasonably interfere with free use of public streets, sidewalks, or other public ways adjacent or contiguous thereto.

“2. Any person guilty of violating this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars (\$500.00), or imprisoned in jail not more than six (6) months, or both such fine and imprisonment.”

CONCLUSION

The Opinion of the court written by Judge Coleman, Circuit Judge, the concurring opinion of Judge Cox, District Judge, and the written Finding of Facts and Conclusions of Law entered by the District Court are so complete and in such detail as to be a complete answer to Appellants' contention. The Finding of Facts by the court is overwhelmingly substantiated by the record and the decision of the district court should be affirmed by this court.

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DONE, this the day of December, 1967.

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the then pending prosecutions against them for violating the statute² were part of a plan of selective enforcement engaged in by appellees with no expectation of securing convictions, but solely to discourage appellants from picketing to protest racial discrimination in voter registration and to encourage Negro citizens to attempt to register to vote.

A three-judge court initially considered the issues on the amended complaint and answers, and dismissed the complaint "... in the exercise of its sound judicial discretion, that such extraordinary relief is not due or suggested in this case, and in furtherance of the doctrine of abstention" 244 F. Supp. 846, 849. We vacated the dismissal, 381 U. S. 741, and remanded for reconsideration in light of our intervening decision in *Dombrowski v. Pfister*, 380 U. S. 479.³ On remand the three-judge court⁴ conducted an evidentiary hearing and again dismissed, this time with prejudice. 262 F. Supp. 873. We noted probable jurisdiction. 389 U. S. 809. We affirm.

² All of the prosecutions were removed under 28 U. S. C. § 1443 to the federal courts. Following our opinion in *City of Greenwood v. Peacock*, 384 U. S. 808, the cases were remanded to the state courts. *Hartfield et al. v. Mississippi*, 363 F. 2d 869. They were subsequently stayed by the District Court and are presently stayed pending our decision on this appeal.

³ Our *per curiam* stated, 381 U. S. 741-742: "On remand, the District Court should first consider whether 28 U. S. C. § 2283 bars a federal injunction in this case, see 380 U. S., at 484, n. 2. If § 2283 is not a bar, the court should then determine whether relief is proper in light of the criteria set forth in *Dombrowski*." The District Court held that § 2283 prohibited the Court from enjoining or abating the criminal prosecutions initiated against the appellants prior to the filing of the suit on April 13, 1964, and further, that 42 U. S. C. § 1983 creates no exception to § 2283. 262 F. Supp. 873, 878. We find it unnecessary to resolve either question and intimate no view whatever upon the correctness of the holding of the District Court.

⁴ The three-judge District Court which rendered the initial decision consisted of Circuit Judge Rives and District Court Judges

I.

The Mississippi Anti-Picketing Law was enacted by the Mississippi Legislature and signed by the Governor on April 8, 1964, and became effective immediately. The Forrest County voting registration office is housed in the county courthouse in Hattiesburg. The courthouse is set back a distance from the street and is reached by several paved walks surrounding grass plots and a monument. On January 22, 1964, civil rights organizations fostering increased voter registration of Negro citizens staged a large demonstration on the courthouse site. Thereafter they maintained a picket line on the grounds every day except Sundays from January 23 until May 18, 1964. To facilitate access to the courthouse the sheriff at the outset blocked off with barricades a small "march route" area within the grounds to the right of the main entrance to the courthouse, where the pickets, usually few in number, were allowed to picket until April 9. On April 9, the day following the enactment of the Anti-Picketing Law, the sheriff accompanied by other county officials, read the new law to the pickets at the "march route" and directed them to disperse, which they did. The sheriff also removed the barricades marking the "march route." On the morning of April 10, the pickets, now increased to 35 or 40 persons, appeared at the courthouse and resumed picketing along the now unmarked "march route." The pickets were arrested and formally charged with violation of the Anti-Picketing statute. Others were arrested that afternoon. Seven more pickets were arrested and charged on the morning of April 11. The complaint in this action was filed April 13. Picket-

Mize and Cox. Upon the death of Judge Mize, Circuit Judge Coleman was designated to serve in his stead. Circuit Judge Rives dissented from his colleagues on both occasions. See 244 F. Supp., at 856, 262 F. Supp., at 881.

ing nonetheless continued on the "march route" every day until May 18, but no further arrests were made until May 18, when nine pickets were arrested and charged. All picketing stopped thereafter.

II.

The District Court's response on the remand to reconsider the case in light of *Dombrowski* was first to render a declaratory judgment, cf. *Zwickler v. Koota*, 389 U. S. 241,⁵ that the statute was not void on its face, rejecting appellants' contention that it is so broad, vague, indefinite, and lacking in definitely ascertainable standards as to be unconstitutional on its face. We agree with the District Court.

Appellants advance a two-pronged argument. First, they argue that the statute forbids picketing in terms "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. . . ." *Connally v. General Construction Co.*, 269 U. S. 385, 391.⁶ But the statute prohibits only "picketing . . . in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from any . . . county . . . courthouses" The terms "obstruct" and "unreasonably to interfere" plainly require no "guess[ing] at [their] meaning." Appellants focus on

⁵ In the initial decision the District Court declined to pass on the statute's constitutionality, holding that the case was one for abstention. 244 F. Supp., at 855-856. In *Zwickler* we held that it was error in the absence of special circumstances to abstain and refuse to render a declaratory judgment and, further, said, at 254: ". . . a request for a declaratory judgment that a state statute is overbroad on its face must be considered independently of any request for injunctive relief against the enforcement of the statute. We hold that a federal district court has the duty to decide the appropriateness and the merits of the declaratory request irrespective of its conclusion as to the propriety of the issuance of the injunction."

⁶ See *Ashton v. Kentucky*, 384 U. S. 195, 200-201.

the word "unreasonably."⁷ It is a widely used and well understood word and clearly so when juxtaposed with "obstruct" and "interfere." We conclude that the statute clearly and precisely delineates its reach in words of common understanding.⁸ It is "a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be . . . proscribed." *Edwards v. South Carolina*, 372 U. S. 229, 236.

The second prong of appellants' argument is that the statute, even assuming that it is "lacking neither clarity nor precision, is void for 'overbreadth,' that is, that it offends the constitutional principle that 'a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms'" *Zwickler v. Koota*, *supra*, at 250.⁹ The argument centers

The appellants suggest that the amendment to the statute which twice inserts the word "unreasonably" "raises new questions of unconstitutional vagueness and overbreadth not before this Court on the original appeal." The District Court rejected this argument, 262 F. Supp., at 879: "Plaintiffs . . . argue that the addition of the word 'unreasonably' to the statute made it even more vague and indefinite, but we disagree. The word 'unreasonable' seems to have been well understood by the founders of the Republic when they used it in the Fourth Amendment, where it remains, and is enforced, as it should be, to this day." Judge Rives, in dissent, 262 F. Supp., at 897, n. 58; found that the addition of the word to the statute did not alter its scope. "On the contrary, the defendants argue that the statute should always have been interpreted as if this word were present and that the persons arrested did unreasonably block the Court House."

⁷ See *Cameron v. Johnson*, 381 U. S., at 749-750 (opinion of BLACK, J.); *id.*, at 757 (opinion of WHITE, J.).

⁸ See *NAACP v. Alabama*, 377 U. S. 288, 307; see also *Zwickler v. Koota*, 389 U. S. 241, 249-250; *Keyishian v. Board of Regents*, 385 U. S. 589, 609; *Aptheker v. Secretary of State*, 378 U. S. 500,

on the fact that the proscription of the statute embraces picketing employed as a vehicle for constitutionally protected protest. But "picketing and parading [are] subject to regulation even though intertwined with expression and association," *Cox v. Louisiana*, 379 U. S. 559, 563,¹⁰ and this statute does not prohibit picketing so intertwined unless engaged in in a manner which obstructs or unreasonably interferes with ingress or egress to or from the courthouse. Prohibition of conduct which has this effect does not abridge constitutional liberty "since such activity bears no necessary relationship to the freedom to . . . distribute information or opinion." *Schneider v. State*, 308 U. S. 147, 161. The statute is therefore "a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and . . . the fact that free speech is intermingled with such conduct does not bring it within constitutional protection." *Cox v. Louisiana, supra*, at 564.

III.

The District Court's further response on remand to reconsider the case in light of *Dombrowski* was to deny injunctive relief, after an evidentiary hearing, on findings that appellants failed to show sufficient irreparable injury to justify such relief. Appellants argue in this Court that the record discloses sufficient irreparable injury to entitle them to the injunction sought, even if the statute is constitutional on its face.

Dombrowski recognized, 380 U. S., at 483-485, the continuing validity of the maxim that a federal district

508-509; *NAACP v. Button*, 371 U. S. 415, 438; *Shelton v. Tucker*, 364 U. S. 479, 488; *Cantwell v. Connecticut*, 310 U. S. 296, 304-307; *Schneider v. State*, 308 U. S. 147, 161, 165.

¹⁰ See *Schneider v. State*, 308 U. S. 147, 161; *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490, 499-500; *NAACP v. Alabama*, 357 U. S. 449, 460-462; *NAACP v. Button*, 371 U. S. 415, 438-439.

court should be slow to act "where its powers are invoked to interfere by injunction with threatened criminal prosecutions in a state court," *Douglas v. City of Jeannette*, 319 U. S. 157, 162; see *Zwickler v. Koota*, *supra*, at 253. Federal interference with a State's good-faith administration of its criminal laws "is peculiarly inconsistent with our federal framework" and a showing of "special circumstances" beyond the injury incidental to every proceeding brought lawfully and in good faith is requisite to a finding of irreparable injury sufficient to justify the extraordinary remedy of an injunction. 380 U. S., at 484. We found such "special circumstances" in *Dombrowski*. The prosecutions there begun and threatened were not, as here, for violation of a statute narrowly regulating conduct which is intertwined with expression, but for alleged violations of various sections of excessively broad Louisiana statutes regulating expression itself—the Louisiana Subversive Activities and Communist Control Law and the Communist Propaganda Control Law. These statutes were challenged as overly broad and vague regulations of expression. Despite state court actions quashing arrest warrants and suppressing evidence purportedly seized in enforcing them, Louisiana officials continued to threaten prosecutions of *Dombrowski* and his co-appellants under them. In that context, we held that a case of "the threat of irreparable injury required by traditional doctrines of equity" was made out. 380 U. S., at 490. We held further that the sections of the Communist Control Law (for alleged violations of which indictments had been obtained while the case was pending in the federal court) were patently unconstitutional on their face, and remanded with direction to frame an appropriate injunction restraining prosecution of the indictments.

In short, we viewed *Dombrowski* to be a case presenting a situation of the "impropriety of [state officials]

invoking the statute in bad faith to impose continuing harassment in order to discourage appellants' activities" 380 U. S., at 490. In contrast, the District Court expressly found in this case "that there was no harassment, intimidation, or oppression of these complainants in their efforts to exercise their constitutional rights, but they were arrested and they are being prosecuted in good faith for their deliberate violation of that part of the statute which denounces interference with the orderly use of courthouse facilities by all citizens alike." 262 F. Supp., at 876, see also 244 F. Supp., at 848-849. We cannot say from our independent examination of the record that the District Court erred in denying injunctive relief.

Any chilling effect on the picketing as a form of protest and expression that flows from good-faith enforcement of this valid statute would not, of course, constitute that enforcement an impermissible invasion of protected freedoms. *Cox v. Louisiana, supra*, at 564. Appellants' case that there are "special circumstances" establishing irreparable injury sufficient to justify federal intervention must therefore come down to the proposition that the statute was enforced against them, not because the Mississippi officials in good faith regarded the picketing to violate the statute, but in bad faith to harass appellants' exercise of protected expression with no intention of pressing the charges or with any expectation of obtaining convictions, but knowing that appellants' conduct did not violate the statute. We agree with the District Court that the record does not establish the bad faith charged. This is therefore not a case in which ". . . a federal court of equity by withdrawing the determination of guilt from state courts could rightly afford petitioners any protection which they could not secure by prompt trial and appeal pursued to this Court."

Douglas v. City of Jeannette, supra, at 164. We have not hesitated on direct review to strike down applications of constitutional statutes which we have found to be unconstitutionally applied to suppress protected freedoms. See *Cox v. Louisiana, supra*; *Wright v. Georgia*, 373 U. S. 284; *Edwards v. South Carolina, supra*.

Appellants argue that the adoption of the statute in the context of their picketing at the courthouse, and its immediate enforcement by the arrests on April 10 and 11, provide compelling evidence that the statute was conceived and enforced solely to bring a halt to the picketing. Appellants buttress their argument by characterizing as "indefensible entrapment" the enforcement of the statute on April 10 against picketing conduct which county officials had permitted for almost three months along the "march route" marked out by the officials themselves. This argument necessarily implies the suggestion that had the statute been law when the picketing started in January it would not have been enforced. There is no support whatever in the record for that proposition. The more reasonable inference is that the authorities believed that until enactment of the statute on April 8 they had no choice but to allow the picketing. In any event, upon the adoption of the law, it became the duty of the authorities in good faith to enforce it, and to prosecute for picketing that violated that law. Similarly, insofar as appellants argue that selective enforcement was shown by the failure to arrest them for picketing from April 11 to May 18, the short answer is that it is at least as reasonable to infer from the record that the authorities did not regard their conduct in that period to violate the statute. Indeed, the fact that no arrests were made over that five-week period is itself some support for the District Court's rejection of appellants' primary contention that appellees

used the statute in bad faith to discourage appellants from picketing to foster increased voter registration of Negro citizens.

Nor are we persuaded by the argument that, because the evidence adduced at the hearing of the pickets' conduct throughout the period would not be sufficient, in the view of appellants, to sustain convictions on a criminal trial, it was demonstrated that the State had no expectation of securing valid convictions. *Dombrowski v. Pfister, supra*, at 490. This argument mistakenly supposes that "special circumstances" justifying injunctive relief appear if it is not shown that the statute was in fact violated. But the question for the District Court was not the guilt or innocence of the persons charged; the question was whether the statute was enforced against them with no expectation of convictions but only to discourage exercise of protected rights. The mere possibility of erroneous application of the statute does not amount "to the irreparable injury necessary to justify a disruption of orderly state proceedings." *Dombrowski v. Pfister, supra*, at 485. The issue of guilt or innocence is for the state court at the criminal trial; the State was not required to prove appellants guilty in the federal proceeding to escape the finding that the State had no expectation of securing valid convictions.¹¹ Appellants say that the picketing was non-obstructive, but the State claims quite the contrary, and the record is not totally devoid of support for the State's claim.

Appellants argue that selective enforcement was shown by the evidence that subsequent to the arrests of the pickets parades were held in Hattiesburg during which

¹¹ See 244 F. Supp., at 849: "this Court indicates nothing as to the guilt or innocence of the plaintiffs"; 262 F. Supp., at 876: "We do not sit in this proceeding to determine the guilt or innocence of the plaintiffs"

the streets of the downtown area, including the locale of the courthouse, were cordoned off during daytime business hours and the sidewalks were obstructed by crowds of spectators during the parades. But this statute is not aimed at obstructions resulting from parades on the city streets. All that it prohibits is the obstruction of or unreasonable interference with ingress and egress to and from public buildings, including courthouses, and with traffic on the streets or sidewalks adjacent to those buildings. There was no evidence of conduct of that nature at any other place which would have brought the statute into play, let alone evidence that the authorities allowed such conduct without enforcing the statute.

Affirmed.



SUPREME COURT OF THE UNITED STATES

No. 699.—OCTOBER TERM, 1967.

John Earl Cameron et al.,	}	On Appeal from the United States District Court for the Southern District of Mississippi.
Appellants,		
v.		
Paul Johnson, etc., et al.		

[April 22, 1968.]

MR. JUSTICE FORTAS, with whom MR. JUSTICE DOUGLAS joins, dissenting.

In my opinion, *Dombrowski v. Pfister*, 380 U. S. 479 (1965), requires that the decision of the court below be reversed.

I agree that the statute in question is not "unconstitutional on its face." But that conclusion is not the end of the matter. *Dombrowski* stands for the proposition that "the abstention doctrine . . . is inappropriate for cases . . . where . . . statutes are justifiably attacked on their face as abridging free expression, or as applied for the purpose of discouraging protected activities." 380 U. S., at 489-490. (Emphasis added.)

Dombrowski establishes that the federal courts will grant relief when "defense of the state's criminal prosecution will not assure adequate vindication" of First Amendment rights. 380 U. S., at 485. According to *Dombrowski*, this condition exists when the State has invoked the criminal law in bad faith and for the purpose of harassing and disrupting the exercise of those rights. Federal courts are available to enjoin the invocation of state criminal process when that process is abusively invoked "without any hope of ultimate success, but only to discourage" the assertion of constitutionally protected rights. 380 U. S., at 490. See also *City of Greenwood v. Peacock*, 384 U. S. 808, 829 (1966).

Dombrowski is strong medicine. It involves interposition of federal power at the threshold stage of the administration of state criminal laws. *Dombrowski's* remedy is justified only when First Amendment rights, which are basic to our freedom, are imperiled by calculated, deliberate state assault. And those who seek federal intervention bear a heavy burden to show that the State, in prosecuting them, is not engaged in use of its police power for legitimate ends, but is deliberately invoking it to harass or suppress First Amendment rights. *Dombrowski* should never be invoked when the State is, in substance and truth, engaged in the enforcement of valid criminal laws. Ordinarily, the presumption that the State's motive was law enforcement and not interference with speech or assembly will carry the day.

I approach the problem of the present case with this modest view of *Dombrowski's* scope. Even so, in my judgment, *Dombrowski* commands reversal of the judgment in this case. *Dombrowski* means precious little, I submit, if the presumption supporting state action is not overcome by facts such as those before us now.

On January 22, 1964, appellants began to picket the Forrest County voting registration office, which is located in the Hattiesburg, Mississippi, courthouse. The picketing was designed to protest racial discrimination in voter registration and to encourage Negro citizens of the county to register. On that day, there was a large crowd of several hundred persons gathered near the courthouse. The picketing continued from January 22 until May 18, every day except Sundays. After the initial period culminating in the first arrests on April 10, the number of pickets varied from seven to 10.

Shortly after the first day of picketing, the sheriff marked out a "march route." The pickets thereafter confined themselves to this route. They were allowed to continue picketing unmolested. The march route

never took the pickets directly in front of any entrance to the courthouse. The picketing was, by all accounts, peaceful and without incident. The pickets at first sang, chanted, preached, and prayed, but within a few days and beginning well before the time of the arrests, they confined themselves to a slow, quiet walk. This continued throughout the relevant dates.

The evidence in this record that the picketing interfered with or even inconvenienced pedestrians is negligible.¹ There is no evidence that access to the courthouse was actually obstructed. If the pickets had been disorderly or had obstructed use of the sidewalks or access to the courthouse, the police, subject to constitutional limitations, could have arrested them under various statutes.² But the record is clear: The pickets confined themselves to the line of march designated by the police themselves, and they were quiet and orderly. They remained at some considerable distance from at least three entrances to the courthouse, including the principal one at the top of the courthouse steps. There was no reason for their arrest. They were obeying, not disobeying, the police.

¹ With respect to the arrests made on the morning of April 10, there are some unimpressive shreds of such evidence: the testimony of the home demonstration agent that, in proceeding outside from her office (located in the courthouse) to the office of the county agent (also located in the courthouse), she found that the pickets "were so close together that I had to wait for just a moment to get in line and I fell in line with them and started weaving back and forth until I reached the front steps and then dropped out of the line"; in addition, the president of the Forrest County Board of Supervisors, attracted to the scene by "curiosity as much as anything else," testified that in his "opinion" a side entrance to the courthouse was obstructed by the pickets.

² Mississippi Code §§ 2087.5, 2087.9 (disorderly conduct); Mississippi Code § 2089.5 (disturbance of the peace); Mississippi Code § 2090.5 (disturbance in public place). The record in fact shows that in the early period of picketing some arrests for breach of the peace were made.

For about two and a half months, from January 22, 1964, to April 10, 1964, the police stood by. The pickets marched on the prescribed route. Nobody had any difficulty of passage or of access to the public building.

Then, on April 8, 1964, the Mississippi Legislature enacted a law which, I believe, may fairly be characterized as a directive to the police that the picketing in Hattiesburg should be stopped—forthwith. This law forbade “picketing . . . in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from any . . . courthouse”

The law was signed by the Governor on the same day it was passed by the State Legislature, and delivered by messenger to waiting law enforcement officials in Hattiesburg on the following day. As soon as the law was brought to those officials on April 9, they proclaimed it aloud to the pickets and asked them to disperse. There was then only a small group of pickets. The following morning, April 10, when pickets returned to the march route, the first arrests were made. A large number of persons were picketing on that day, 35 or 40 of them, because they anticipated arrests. In the same afternoon, only a woman and some school children were picketing. All were arrested. On the next day, April 11, nine persons were demonstrating; seven were arrested. The picketing continued every day except Sunday. On May 18, again, there were nine pickets, and all were arrested. There was no further picketing.

Apart from the morning of April 10,³ at none of the times when arrests were made is there a shred of evidence that the April 8 statute was violated. There is no suggestion that the few pickets present on the afternoon of April 10, on April 11, or on May 18, blocked access

³ See n. 1, *supra*.

to or egress from the courthouse, or obstructed the walks.⁴

I submit that this record compels the following conclusions:

1. Appellants were arrested and prosecuted "without any hope of ultimate success." There is no evidence that their activities "obstructed . . . or unreasonably interfered with ingress or egress to and from any . . . courthouse. . . ."

The meagre, insubstantial evidence of inconvenience to pedestrians, which I have summarized in notes 1 and 4 above, could not be used to support a conviction under the language of this specific, narrowly phrased, statute. See *Thompson v. Louisville*, 362 U. S. 199 (1960); cf. *Brown v. Louisiana*, 383 U. S. 131 (1966) (opinion of FORTAS, J.). Even if we assume that this record shows that some pedestrians were inconvenienced, that is not the same thing as blocking the doors of the courthouse. I agree that, in a proceeding of this sort, the State does not have to prove the violation of law beyond a reasonable doubt and establish that it is not constitutionally protected. But if *Dombrowski* means anything, the State must certainly show more than there is in this record.

2. The arrests and their sequence demonstrate that the State was not here engaged in policing access to the

⁴There were on each of these occasions fewer than 10 pickets walking around a grassy plot on the "march route," a path that measured well over 100 feet in length. There is some indication of a contention that on these occasions the pickets were walking closely bunched. But as Circuit Judge Rives, dissenting in the court below, pointed out, 10 pickets walking closely bunched could not possibly have obstructed any entrance to the courthouse for more than a small fraction of the time necessary to proceed around the plot. And in any event, there is no evidence of anyone having actually been impeded in attempting to gain access to the courthouse on these dates.

courthouse or even freedom of the sidewalks, but in a deliberate plan to put an end to the voting-rights demonstration. This is shown by the facts (1) that the pickets marched in the line laid out by the police themselves; (2) that the police did not interfere for two and a half months; (3) that the legislature passed a rifle-shot law, neatly directed to this particular situation; (4) that thereupon the police set out to break up the picketing; (5) that the number, volume, and characteristics of the picketing certainly were not more obstructive on the days of the last three arrests than on any other days in which the picketing occurred and was tolerated.

In my opinion, these conclusions demonstrate that the appellants were not arrested as a result of good-faith administration of the criminal law. They were arrested for the purpose of putting a stop to a peaceful, orderly demonstration protected by the First Amendment in principle and in the manner of execution here. They were not arrested because they blocked access to the courthouse. There is powerful evidence in this record that the State cannot possibly anticipate a conviction of these appellants which will withstand the tests this Court has laid down in the First Amendment and Fourteenth Amendment areas; and it requires more indulgence than this Court has permitted in cases involving First Amendment freedoms for us to say that the State has made a tolerable showing to the contrary.

I would reverse the judgment below and remand for the entry of an appropriate order.⁵

⁵ In view of the fact that the majority does not reach the issue, I consider it inappropriate to discuss whether the anti-injunction statute, 28 U. S. C. § 2283, constitutes a bar to *Dombrowski* relief in this case. See, however, *City of Greenwood v. Peacock*, 384 U. S. 808, 829 (1966).